

भारत का राजपत्र The Gazette of India

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नं. 29] नई दिल्ली, कलिकाट, जुलाई 17, 1993/आसाढ़ 26, 1915
No. 29] NEW DELHI, SATURDAY, JULY 17, 1993/ASADHA 26, 1915

इस भाग में मिले हुए राजा की जाती है जिससे कि वह अपने अधिकार को अपने
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as
a separate compilation

भाग II—खण्ड 3—उप-खण्ड (II) PART II—Section 3—Sub-Section (II)

भारत सरकार के विभागों (रक्षा विभाग की छोड़कर) द्वारा जारी किये गये सांख्यिक आदेश और अधिसूचनाएँ
Statutory Orders and Notifications issued by the Ministries of the Government of India (other than
the Ministry of Defence)

अपारंपरिक ऊर्जा स्रोत विभाग
नई दिल्ली, 4 मई, 1993

का. भा. 1521:—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय
प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4)
के अनुसरण में, अपारंपरिक ऊर्जा स्रोत विभाग के अंतर्गत आने
वाले निम्नलिखित कार्यालयों को, जिनके 80 प्रतिशत से अधिक
कर्मचारीवृन्द ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधि-
सूचित करती है :-

1. प्रधान वैज्ञानिक अधिकारी, क्षेत्रीय कार्यालय, अपारंपरिक
ऊर्जा स्रोत विभाग, 29, जोन-II, महाराणा प्रताप नगर,
भोपाल-462011, (मध्य प्रदेश)
2. प्रधान वैज्ञानिक अधिकारी, क्षेत्रीय कार्यालय, अपारंपरिक ऊर्जा
स्रोत विभाग, एन. सी. ओ., न.-364, सेक्टर-44, डी.,
चण्डीगढ़-160022

[संख्या 11011 (1) 93-हिंदी]

अनुराग नैथानी, सहायक निदेशक (रा. भा.)

MINISTRY OF NON-CONVENTIONAL ENERGY
SOURCES

New Delhi, the 4th May, 1993

S.O. 1521.—In pursuance of Sub-Rule (4) of Rule 10 of
the Official Language (Use for Official Purposes of the
Union), Rules, 1976, the Central Government hereby notifies
the following offices under the Ministry of Non-Conventional
Energy Sources, thereof more than 80% Staff have acquired
working knowledge of Hindi :—

1467 GI/93—1

- (1) Principal Scientific Officer, Regional Office, DNES,
29, Zone, II, Maharana Pratap Nagar, Bhopal-462011
(M.P.).
- (2) Principal Scientific Officer, Regional Office, DNES,
SCO, No. 364, Sector-44, D, Chandigarh-160022.

[No. 11011(1)/93-Hindi]

J. R. NAITHANI, Asstt. Director (OL)

वित्त विभाग

(प्राथमिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 21 जून, 1993

का. भा. 1522:—भारतीय स्टेट बैंक द्वारा कुणाराम बलदेव
बैंक लिमिटेड के कारबार के अधिग्रहण से संबंधित दिनांक 22-2-1974
को सरकार द्वारा जारी किये गये आदेश की शर्तों तथा निर्बंधनों की
धारा 5 (4) तथा भारतीय स्टेट बैंक अधिनियम, 1955 (1955 का
23) के खण्ड 35 के उपखण्ड (7) द्वारा प्रदत्त शक्तियों का प्रयोग
करते हुए, केन्द्रीय सरकार एतद्वारा कुणाराम बलदेव बैंक लिमिटेड
को वसूल न की गई परिसम्पत्तियों के अन्तिम मूल्यांकन की समय
सीमा को 19 अप्रैल, 1993 से 18 अप्रैल, 1994 (दोनों दिन शामिल
हैं) तक की एक वर्ष की अवधि के लिए और बढ़ाती है।

[सं. 15/6/87-बी. ओ.-ए.]

के. के. पंगल, प्रवर सचिव

MINISTRY OF FINANCE
(Department of Economic Affairs)
(Banking Division)

New Delhi, the 21st June, 1993

S.O. 1522.—In pursuance of clause 5(IV) of the Terms and Conditions sanctioned by the Central Government under an order dated 22nd February, 1974 relating to the acquisition by the State Bank of India of the business of Krishnaram Baldeo Bank Limited, and in exercise of the powers conferred by sub-section (7) of Section 35 of the State Bank of India Act, 1955 (23 of 1955), the Central Government hereby extends the time limit for final valuation of the unrealised assets of the Krishnaram Baldeo Bank Limited, for a further period of one year from 19th April, 1993 to 18th April, 1994 both days inclusive.

[No. 15/6/87-B.O.A.]

K. K. MANGAL, Under Secy.

नई दिल्ली, 23 जून, 1993

का. भा. 1523:—यतः बैंककारी विनियमन अधिनियम, 1949 की धारा 45 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तथा उसके अनुसार केन्द्रीय सरकार ने नेशनल बैंक आफ लाहौर लि., दिल्ली के भारतीय स्टेट बैंक के साथ विलय के लिए 20 फरवरी, 1970 को एक योजना मंजूर की थी।

यतः उक्त योजना के खण्ड 6 के उपखण्ड (9) के अधीन भारतीय स्टेट बैंक द्वारा नेशनल बैंक आफ लाहौर लि., दिल्ली की परिसम्पत्तियों का अन्तिम रूप से मूल्यांकन नियत तारीख से बाहर वर्षों की समाप्ति के पश्चात् अपेक्षित था जो कि नियत तारीख को अन्तिम रूप से मूल्यांकित कर लिया गया है।

यतः भारतीय स्टेट बैंक ने यह अभ्यावेदन किया है कि बड़ी संख्या में परिसंपत्तियाँ अक्रयस्त होने और बैंक के प्रयासों के बावजूद अधिकांश मवों की बमूलियाँ अभी बाकी होने के कारण बैंक, विलय योजना के खण्ड 6 के उपखण्ड (9) में विनिर्दिष्ट समय के भीतर परिसंपत्तियों का अन्तिम रूप से मूल्यांकन करने में असमर्थ रहा है।

और यतः केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के बाद इस बात से संतुष्ट है कि विलय योजना को लागू करने में कठिनाई पैदा हो गई है और उक्त समय बढ़ाकर जितने में परिसंपत्तियों का अन्तिम रूप से मूल्यांकन अपेक्षित है, उक्त कठिनाई को दूर करना जरूरी है।

अतः अब नेशनल बैंक आफ लाहौर लि., दिल्ली के भारतीय स्टेट बैंक के साथ विलय की 20 फरवरी, 1970 की विलय योजना के खण्ड 21 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा निदेश देती है कि भारतीय स्टेट बैंक, भारतीय रिजर्व बैंक के परामर्श से तथा उसके अनुमोदन से नेशनल बैंक आफ लाहौर लि., दिल्ली को उन परिसम्पत्तियों का, जिनकी बमूलियाँ और मूल्यांकन नहीं हुआ है, नियत तारीख से चौबीस वर्षों की अवधि के भीतर मूल्यांकन कर लेगा।

[सं. 17/6/82-बी. ओ. III]

के. के. मंगल, अवर सचिव

New Delhi, the 23rd June, 1993

S.O. 1523.—Whereas on 20th February, 1970 a scheme of Amalgamation of the National Bank of Lahore Ltd., Delhi with the State Bank of India was sanctioned by the Central Government in exercise of the powers conferred by and in accordance with Section 45 of the Banking Regulation Act, 1949.

Whereas under Sub-clause (ix) of Clause 6 of the said Scheme, the State Bank of India was required to make a final valuation of the assets of the National Bank of Lahore Ltd., Delhi, which have been provisionally valued on the prescribed

date, on the expiry of twelve years from the prescribed date.

Whereas the State Bank of India has represented that in view of the large number of assets involved and the recovery of most of the items yet to be realised in spite of its efforts, it has not been able to make the final valuation within the time specified in sub-clause (ix) of Clause 6 of the Scheme of Amalgamation.

And whereas the Central Government in consultation with the Reserve Bank of India is satisfied that a difficulty has arisen in giving effect to the Scheme of Amalgamation which it is necessary to remove by extending the time within which the final valuation of assets is required to be made.

Now, therefore, in exercise of the powers conferred by clause 21 of the Scheme of Amalgamation dated 20-2-1970 of the National Bank of Lahore Ltd., Delhi with the State Bank of India, the Central Government hereby directs that the State Bank of India shall in consultation with and with the approval of the Reserve Bank of India value the assets of the National Bank of Lahore Ltd., Delhi which have not been realised and valued, within a period of twenty four years from the prescribed date.

[No. 17/6/82-B.O.III]

K. K. MANGAL, Under Secy.

आदेश

नई दिल्ली, 25 जून, 1993

का. भा. 1524:—भारतीय स्टेट बैंक अधिनियम, 1953 की धारा 20 की उपधारा (1क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, भारतीय स्टेट बैंक के प्रबंध निदेशक श्री वी. महादेवन का कार्यकाल इस नोटिस को उन पर तारीख भिजे जाने की तारीख से समाप्त करती है।

[सं. एक. 20/16/90-बी. ओ. I]

आर. व्ही. गुप्ता, अवर सचिव

ORDER

New Delhi, the 25th June, 1993

S.O. 1524.—In exercise of the powers conferred by sub-section (1A) of Section 20 of the State Bank of India Act, 1955, the Central Government hereby terminates the term of office of Sh. V. Mahadevan, Managing Director, State Bank of India with effect from the date of service of this notice on him.

[F. No. 20/16/90-B.O.I]

R. V. GUPTA, Add. Secy.

व्यापार मंत्रालय

(विदेश व्यापार महानिदेशालय)

नई दिल्ली, 30 जून, 1993

का. भा. 1525:—मैसर्स स्टील अथॉरिटी ऑफ इण्डिया लि. (मलया स्टील प्लांट), दुर्गापुर, को 10,82,640 टन (38,080 मसरीकी टन) के निर्यात आभार सन्नि 801,900 टन (27,651 मसरीकी टन) के समतुल्य बीमा भाड़ा मूल्य के लिए एक वार्षिक लाइसेंस सं. पी डब्ल्यू 1514187 दिनांक 21-9-92 मंजूर किया गया था, जिसकी वैधता निर्णय की तारीख से 12 महीने के लिए थी। अब फर्म ने दूसरा वार्षिक लाइसेंस (विनियम नियंत्रण प्रति तथा सीमा शुल्क

प्रयोजन प्रति दोनों) प्रदान करने के लिए इस आधार पर आवेदन किया है कि लाइसेंस खो गया है/बूझ हो गया है। फर्म ने आवश्यक हलफनामा भी प्रस्तुत किया है जिसके अनुसार पूर्वोक्त अधिम लाइसेंस की किसी भीमाशुल्क प्राधिकारी से पूर्वाहृत नहीं कराया गया था और उसका बिलको भी हस्तामाल नहीं किया गया था तथा लाइसेंस के मद्धे दाकी लागत बीमा माह 8,01,900 रुपए (27,651 अमरीकी डालर) है। हलफनामे में इस आवेद की एक प्रतिया भी समाविष्ट की गई है कि यदि उक्त लाइसेंस बाद में मिलता है या इसके बारे में पता चलता है, तो उसे निर्गम प्राधिकारी को वापस कर दिया जाएगा।

इस तथ्य की पुष्टि हो जाने पर कि मूल अधिम लाइसेंस खो गया है, अधोहस्ताक्षरी का निदेश है कि अधिम लाइसेंस की दूसरी प्रति आवेदक को जारी कर दी जाए। साथ ही विदेश व्यापार (विकास और विनियमन) अधिनियम, 1992 के खण्ड 9 के उपखण्ड (4) में प्रदत्त शक्तियों का प्रयोग करते हुए मैं एतद्वारा मूल अधिम लाइसेंस को निरस्त करता हूँ।

[क्र. सं. 01/82/40/308/एएम 93/सी ईएस-3/टी. आर. नं. 251/809]

आर. के. सूद, उप महानिदेशक, विदेश व्यापार
कृते महानिदेशक, विदेश व्यापार

MINISTRY OF COMMERCE
(Office of the Director General of Foreign Trade)

New Delhi, the 30th June, 1993

S.O. 1525.—M/s. Steel Authority of India Ltd. (Alloy Steel Plant), Durgapur was granted an Advance Licence No. P/W/1514187 dated 21-9-92 for a cif value of Rs. 8,01,900/- (US\$ 27,651) with an export obligation of Rs. 10,82,640/- (US\$ 33,080) with a validity of 12 months from the date of issue. Now the firm have applied for grant of Duplicate Advance Licence (both Exchange Control Copy and Customs Purpose Copy) on the ground that the licence has been lost/misplaced. The firm have furnished necessary affidavit according to which the aforesaid Advance Licence was not registered with any Customs Authority and was not utilised at all and the balance cif value against the licence is Rs. 8,01,900 (US\$ 27,651). A declaration has also been incorporated in the affidavit to the effect that if the said licence is traced or found later on, it will be returned to the issuing authority.

On being satisfied that the original advance licence has been lost, the undersigned directed that a duplicate Advance Licence should be issued to the applicant. I also, in exercise of the powers conferred in Sub-clause (4) of Clause 9 of the Foreign Trade (Development and Regulation) Act, 1992, hereby cancel the original advance licence.

[F. No. 01/82/40/308/AM '93/DES-III/809]

R. K. SOOD, Dy. Director General of
Foreign Trade
for Director General of Foreign Trade

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

शुद्धि पत्र

नई दिल्ली, 21 मई, 1993

क्र. आ. 1526--केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइप लाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (इसके पश्चात् इसे उक्त अधिनियम कहा जायेगा) की धारा 6 की उपधारा (1) के अधीन जारी और भारत सरकार के राजपत्र भाग--II, खण्ड--3, उपखण्ड (ii) पृष्ठ संख्या 3890 में प्रकाशित भारत सरकार, पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना क्र. आ. 2499 दिनांक 18 सितम्बर, 1992 द्वारा केन्द्रीय सरकार ने घोषित किया कि उन अधिनियमों से उपावद्ध अनुसूचियों में विनिर्दिष्ट भूमि में पेट्रोलियम के परिवहन के प्रयोजन के लिए पेट्रोलियम के परिवहन के लिए भूमि में उपयोग के अधिकार का अर्जन किया जाए।

और केन्द्रीय सरकार की जानकारी में यह बात आई गई कि राजपत्र में प्रकाशित उपरोक्त अधिसूचना में मुद्रण संबंधी कुछ गलतियाँ हैं।

अतः अब केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिसूचना से संलग्न अनुसूची में निम्नलिखित संशोधन करती है।

पृष्ठ संख्या 3890 :-

पर लाइन नं. 589 के सामने क्षेत्रफल के डिक्टर कालम में "10" के स्थान पर "0" पढ़ें।

यह और कि केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि उक्त भूमि के उपयोग का अधिकार केन्द्रीय सरकार में निहित होने के बजाय सभी विस्तरणों से मुक्त होकर, इण्डियन आयल कारपोरेशन लिमिटेड में निहित होगा।

[संख्या आर-31015/36/92--ओ आर I]

कुलदीप सिंह, धवर सचिव

शुद्धिपत्र

नई दिल्ली, 21 मई, 1993

क्र. आ. 1527--केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइप लाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (इसके पश्चात् इसे उक्त अधिनियम कहा जायेगा) की धारा 6 की उपधारा (1) के अधीन जारी और भारत सरकार के राजपत्र भाग--II, खण्ड--3, उपखण्ड (ii) पृष्ठ संख्या 3892 में प्रकाशित भारत सरकार, पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना क्र. आ. 2500 दिनांक 18 सितम्बर, 1992 द्वारा केन्द्रीय सरकार ने घोषित किया कि उन अधिनियमों से उपावद्ध अनुसूचियों में विनिर्दिष्ट भूमि में पेट्रोलियम के परिवहन के प्रयोजन के लिए पाइपलाइन बिछाने हेतु भूमि में उपयोग के अधिकार का अर्जन किया जाए।

और केन्द्रीय सरकार की जानकारी में यह बात आई गई कि राजपत्र में प्रकाशित उपरोक्त अधिसूचना में मुद्रण संबंधी कुछ गलतियाँ हैं।

अतः अब केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अधिसूचना से संलग्न अनुसूची में निम्नलिखित संशोधन करती है।

पृष्ठ संख्या 3892 :- पर लाइन नं. 35 पर गांव का नाम "माखल" के स्थान पर "माण्डल" पढ़ें।

पर लाइन नं. 40 पर गांव का नाम "कोख" के स्थान पर "कोरख" पढ़ें।

यह और कि केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि उक्त भूमि के उपयोग का अधिकार केन्द्रीय सरकार में निहित होने के बजाय सभी विस्तरणों से मुक्त होकर, इण्डियन आयल कारपोरेशन लिमिटेड में निहित होगा।

[संख्या आर-31015/36/92--ओ आर I]

कुलदीप सिंह, धवर सचिव

गुडिपत्र

नई दिल्ली, 21 मई, 1993

का. प्रा. 1528:—केन्द्रीय सरकार ने, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 6 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना नं. का. प्रा. 2852 तारीख 14 नवम्बर, 1992 द्वारा जो भारत के राजपत्र, भाग 2, खण्ड 3, उपखण्ड (ii) के पृष्ठ 4264 से 4265 पर प्रकाशित हुई थी, यह घोषणा की थी कि पेट्रोलियम के परिवहन के लिए पाइपलाइन विद्यमान के प्रयोजन के लिए उक्त अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन किया जाना चाहिए।

और केन्द्रीय सरकार के ध्यान में यह लाया गया है कि राजपत्र में उक्त अधिसूचना के प्रकाशन में टंकण और मुद्रण प्रकृति की कतिपय गलतियाँ हुई हैं;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए, उक्त अधिसूचना और उसके संलग्न अनुसूची का निम्न प्रकार से संशोधन करती है:

पृष्ठ संख्या-4265, के बाये भाग में सर्वे संख्या-746/2 के सामने गांव का नाम कालम (1) में लिखे "कीडियानगर" के स्थान पर "किडियानगर" पड़े।

यह और कि केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि उक्त भूमि के उपयोग का अधिकार केन्द्रीय सरकार में निहित होने के बजाए, सभी विल्लंगनों से मुक्त होकर, इंडियन ऑयल कारपोरेशन लिमिटेड में निहित होगा।

[संख्या प्रा-31015/5/93--ओ आर-I]

कुलदीप सिंह, धवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

Corrigendum

New Delhi, the 21st May, 1993

S.O. 1528.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 2852 dated the 14th November, 1992, published in the Gazette of India, Part-II, Section 3, Sub-section (ii), at pages 4265 to 4266, issued under sub-section (1) of section 6 of the Petroleum and Minerals Pipeline (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act), the Central Government declared that the right of user in the lands specified in the Schedule appended to that notification for the purpose of laying pipelines for transport of petroleum, should be acquired;

गुडिपत्र

नई दिल्ली, 14 जुलाई 1993

का. प्रा. 1530:—अतः पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन भारत सरकार के पेट्रोलियम एवं प्राकृतिक गैस मंत्रालय की अधिसूचना का. प्रा. 186 तारीख 11-1-93 द्वारा केन्द्रीय सरकार ने उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमियों में उपयोग के अधिकार को पाइप लाइनों को बिछाने के प्रयोग के लिए अर्जित करने का अपना आशय घोषित कर दिया था।

और यह सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन सरकार को रिपोर्ट दे दी है।

और भागे वक्त केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात् इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमियों में उपयोग का अधिकार प्रकृति के अनुसार विनिर्दिष्ट किया है।

And whereas, it has been brought to the notice of the Central Government that certain errors of printing nature have occurred in the publication of the said notification in the Gazette;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby amends the Schedule appended to the said notification, as follows :

At page 4266, in village Kidyanagar against survey no. 944 in column 5, for "00" read "60";

And further in exercise of the powers conferred by sub-section (4) of the section 6 of the said act, the Central Government hereby directs that the right of user in the said lands shall instead of vesting in the Central Government, vest free from all encumbrances in the Indian Oil Corporation Limited.

[No. R-31015/5/93-OR-I]

KULDIP SINGH, Under Secy.

गुडिपत्र

नई दिल्ली, 30 जून, 1993

का. प्रा. 1529:—केन्द्र सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन जारी और भारत के राजपत्र भाग-2, खण्ड-3, उपखण्ड (ii) हिन्दी पाठ पृष्ठ संख्या 3513 में प्रकाशित भारत सरकार, पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना का. प्रा. 2306 दिनांक 28 अगस्त, 1991 द्वारा इस अधिसूचना से संलग्न अनुसूची में वर्णित भूमि का अधिग्रहण करने के अपने आशय की सूचना दी थी।

और केन्द्र सरकार की जानकारी में यह बात लाई गई कि राजपत्र में प्रकाशित उपर्युक्त अधिसूचना में मुद्रण की कुछ गलतियाँ हैं।

अतः अब केन्द्र सरकार उक्त अधिनियम की धारा 3 की उपधारा (1) द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुये उक्त अधिसूचना में संलग्न अनुसूची में निम्नलिखित संशोधन करती है।

पृष्ठ संख्या 3513 पर खोह नागोरिया गांव के खसरा संख्या "801/2778" के स्थान पर "801/2779" पड़े।

ऐसी भूमि में जिसकी बाबत उपर्युक्त संशोधन जारी किया गया है, हितबद्ध कोई व्यक्ति इस अधिसूचना के जारी किए जाने के इक्कीस दिन के भीतर उक्त भूमि के सम्पूर्ण या किसी भाग के या उक्त ऐसी या इस पर किसी अधिकार के अर्जित किए जाने के विरुद्ध उक्त अधिनियम की धारा 5 की उपधारा (1) के विधियों के अनुसार साजोप कर सकेगा।

स्पष्टीकरण:—केवल इस अधिसूचना के द्वारा संशोधित गांव के नाम खसरा नं. व क्षेत्रफल की बाबत उक्त अधिनियम की धारा 5(1) के विधियों के अनुसार इक्कीस दिन की उक्त अवधि यह अधिसूचना जारी की जाने की तारीख से प्रारम्भ होगी।

[संख्या प्रा. 31015/6/93-ओ. प्रा. I]

कुलदीप सिंह, धवर सचिव

अब अतः अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रवक्ष शक्ति का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा घोषित करती है कि इस अधिसूचना में सवलत अनुसूची में विनिर्दिष्ट उक्त भूमियों में उपयोग का अधिकार पाह्य लाहन विछाने के प्रयोजन के लिए एतद्वारा अर्जित किया जाता है।

और आगे इस धारा की उपधारा (4) द्वारा प्रदर्शित शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार निर्देश देती है कि उक्त भूमियों में उपयोग का अधिकार केन्द्रीय सरकार में विहित होने के बजाय भ्रमण गैस क. वि. में सभी बाधाओं से मुक्त रूप में धोखे के प्रकाशन की इस नारीय को निहित होगा।

अनुसूची

कठालगुड़ी ओ. सी. एस. से लेपको गैस प्रकल्प कठालगुड़ी (600 एम. एम.) अ. बी पाह्य लाहन के लिये गैस पाह्य लाहन विछान

क्र. सं.	गांव	तालुक	प्लॉट नं.	परिमाण			
				दाग नं.	बि	कां	ल
1.	1 नं कठालगुड़ी गांव	टिपलिंग	सरकार	2	4	2	9
2.	हिकयाजन गांव प्रथम और द्वितीय भाग	टिपलिंग	सरकार	7	1	1	7
			"	8	0	1	9
			"	9	1	0	6
			"	31	1	2	9
			मियादी 24 नं.	308	2	0	9
			सरकार	47	2	0	17
			मियादी 3 नं.	69	0	1	2
			मियादी 9 नं.	71	0	2	7
			सरकार	72	0	0	11
			मियादी 9 नं.	73	0	2	11
			"	111	0	3	2
			वाकसाना	113	0	1	13
			मियादी 26 नं.	114	1	2	6
			मियादी 15 नं.	123	1	1	7
			"	124	0	1	7
			मियादी 21 न	128	1	2	10
			दकसाना	140	0	3	3
			मियादी 21 न	141	0	0	19
			सरकार	142	0	0	7
			"	143	0	0	10
			मियादी 16 न	78	0	4	6
			दकसाना	162	0	4	4
			"	179	1	0	7
			सरकार	178	0	0	10
			दकसाना	177	0	4	8
			मियादी 28 न	176	0	1	11
			सरकार	180	0	0	18
			"	190	0	4	4
			दकसाना	192	0	3	19
			"	216	0	1	13
			सरकार	231	0	4	1
			"	215	0	0	14
			"	213	2	0	12
			"	197	0	2	0
			दकसाना	198	1	1	11
			"	204	0	1	10
सरकार	205	1	0	8			
दकसाना	206	0	2	0			
"	210	0	0	3			
सरकार	214	0	0	7			
कुल क्षेत्रफल				29	2	18	

क्र. सं.	गांव	तालुका	पाटा सं.	दाग सं.	एरिया चि.	कं.	मन्तव्य ल.
3.	1 नं. बोकुलोनी गांव	टिपलिंग	बकसाना	76	1	0	10
			मरकार	15	1	1	11
			"	21	0	1	2
			बकसाना	80	0	0	5
			मरकार	81	0	3	8
			बकसाना	83	1	3	0
			"	84	0	0	5
			मियादी 9 नं.	87	0	1	9
			मियादी 31 नं.	86	0	3	4
			मरकार	85	0	1	13
			मियादी 6 नं.	52	1	1	12
			बकसाना	53	0	2	6
			मरकार	30	5	3	9
			मियादी 58 नं.	39	1	1	5
			कुल क्षेत्रफल		15	2	19
4.	3 नं. टिपलिंग बोकुलोनी गांव		मरकार	126	7	0	10

[सं. ओ.-12016/91/92- ओ एन सी/डी यू.]

एम. मार्टिन, डैस्क अधिकारी

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 14th July, 1993

S.O. 1530.—Whereas by notification of the Government of India in the Ministry of Petroleum and Natural Gas S.O. 186 dated 11-1-93 under sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) the Central Government declared its intention to acquire the right of user in the lands specified in the schedule appended to that notification for the purpose of laying pipeline;

And whereas the Competent Authority has under sub-section (1) of Section 6 of the said Act, submitted report to the Government;

And further whereas the Central Government has, after considering the said report, decided to acquire the right of user in the lands specified in the schedule appended to this notification.

Now, therefore, in exercise of the power conferred by sub-section (1) of the Section 6 of the said Act, the Central Government hereby declares that the right of user in the said lands specified in the schedule appended to this notification hereby acquired for laying the pipeline;

And further in exercise of power conferred by sub-section (4) of that Section, the Central Government directs that right of user in the said lands shall instead of vesting in the Central Government vests on this date of publication of this declaration in the Assam Gas Company Limited free from encumbrances

LAND SCHEDULE

Laying of 600mm O D Underground natural gas pipe line from Kathalguri OCS, to Kathalguri NEEPCO Project site.

Sl. No.	Name of village	Mouza	Patta No.	Dag No.	Area			Remarks
					B	K	L	
1.	1 No. Kathalguri Vill.	Tipling	Wast Land	2	4	2	9	
2.	Dhakeitajan Vill. 1st and 2nd Part	Tipling	Wast land	7	1	1	7	
			Do.	8	0	1	9	
			Do.	9	1	0	6	
			Do.	31	1	2	9	
			P.P.No. 24	308	2	0	9	
			Wast land	47	2	0	17	
			P.P.No.3	69	0	1	2	
			P.P.No. 9	71	0	2	7	
			Wast land	72	0	0	11	
			P.P.No. 9	73	0	2	11	

Sl. No.	Name of Village	Mouza	Patta No.	Dag No.	Area			Remarks
					B	K	L	
			P.P.No. 9	111	0	3	2	
			Annual	113	0	1	13	
			P.P.No.26	114	1	2	6	
			P.P.No.15	123	1	1	7	
			Do.	124	0	1	7	
			P.P.No.21	128	1	2	10	
			Annual	140	0	3	3	
			P.P.No.21	141	0	0	19	
			Wast Land	142	0	0	7	
			Do.	143	0	0	10	
			P.P.No.16	78	0	4	6	
			Annual	162	0	4	4	
			Do.	179	1	0	7	
			Wast Land	178	0	0	10	
			Annual	177	0	4	8	
			P.P.No.28	176	0	4	11	
			Wast Land	189	0	0	18	
			Do.	190	0	4	4	
			Annual	192	0	3	19	
			Do.	216	0	1	13	
			Wast Land	231	0	4	1	
			Do.	215	0	0	14	
			Do.	213	2	0	12	
			Do.	197	0	2	0	
			Annual	198	1	1	11	
			Do.	204	0	1	10	
			Wast Land	205	1	0	8	
			Annual	206	0	2	0	
			Do.	210	0	0	3	
			Wast Land	214	0	0	7	
			Total		29	2	18	
3.	1 No. Bokuloni Vill.	Tipling	Annual	76	1	0	10	
			Wast Land	15	1	4	11	
			Do.	21	0	1	2	
			Annual	80	0	0	5	
			Wast Land	81	0	3	8	
			Annual	83	1	3	0	
			Do.	84	0	0	5	
			P.P.No.9	87	0	1	9	
			P.P.No.31	86	0	3	4	
			Wast Land	85	0	1	13	
			P.P.No.6	52	1	1	12	
			Annual	53	0	2	6	
			Wast Land	53	0	2	6	
			Wast Land	30	5	3	9	
			P.P.No.58	39	1	1	5	
			Total		15	2	19	
4.	3 No. Bokuloni Vill.	Tipling	Wast Land	126	7	0	10	

[No. O 12016/91/92—ONG/DV]
M. MARTIN, Desk Officer

नई दिल्ली, 14 जुलाई, 1993

का. अ. 1531 :—यतः पेट्रोलियम और नैजिज पाइपलाइन (भूमि में उपयोग के अधिकार का अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अन्तर्गत भारत सरकार के पेट्रोलियम एवं प्राकृतिक गैस मंत्रालय की अधिसूचना का. अ. 186 तारीख 11-1-93 द्वारा केन्द्रीय सरकार ने उक्त अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमियों में उपयोग के अधिकार को पाइप लाइनों को बिछाने के प्रयोजन के लिए अर्जित करने का प्रस्ताव प्रकाशित कर दिया गया था।

और यतः सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अन्तर्गत सरकार को रिपोर्ट दे दी है।

और आगे यतः केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात् इस अधिसूचना में अनुसूची में विनिर्दिष्ट भूमियों में उपयोग का अधिकार अर्जित करने का विनिश्चय किया है।

अब अतः अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्ति का प्रयोग करते हुए केन्द्रीय सरकार निर्देश देती है कि इस अधिसूचना में संलग्न अनुसूची में विनिर्दिष्ट उक्त भूमियों में उपयोग का अधिकार पाइपलाइन बिछाने के प्रयोजन के लिए एतद्वारा अर्जित किया जाता है।

और आगे इस धारा की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार निर्देश देती है कि उक्त भूमियों में उपयोग का अधिकार केन्द्रीय सरकार में विहित होने के अन्तर्गत प्रत्येक गैस कं. लि. में सभी बाधाओं से मुक्त रूप में शोषण के प्रकाशन की इस तारीख को निहित होगा।

अनुसूची

कटालगुड़ी ऑ. सी. एस. सेनेपको गैस प्रकल्प, कटालगुड़ी 600 एम. एस. म. घो. पाइप लाइन के लिये गैस पाइप लाइन बिछाना

क्र. सं.	गांव	तालुक	पाटानं.	भागनं.	बि	कं.	प्रारंभ	समाप्ति
						म.		
1. मेरमेर गांव	टिपलिय	सरकार	344	1	0	6		
		खसाली	315	2	4	16		
		सरकार	343	3	1	10		
		भियाबी 64 नं.	342	1	4	11		
		भियाबी 56 नं.	338	1	3	5		
		भियाबी 53 नं.	339	0	0	11		
कुल क्षेत्रफल				9	1	15		

[नं. अं-12010/93-ओ.एस.जी. डी.यू.]

एस. भाटिन, सचिव, सचिव कार्यालय

New Delhi the 14th July, 1993

S.O. 1531.—Whereas by notification of the Government of India in the Ministry of Petroleum and Natural Gas S.O. 186 dated 11-1-93 under sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) the Central Government declared its intention to acquire the right of user in the lands specified in the schedule appended to that notification for the purpose of laying pipeline;

And whereas the Competent Authority has under sub-section (1) of Section 6 of the said Act submitted report to the Government;

And further whereas the Central Government has, after considering the said report, decided to acquire

the right of user in the lands specified in the schedule appended to this notification.

Now, therefore, in exercise of the power conferred by sub-section (1) of the Section 6 of the said Act, the Central Government hereby declares that the right of user in the said lands specified in the schedule appended to this notification hereby acquired for laying the pipeline;

And further in exercise of power conferred by sub-section (4) of that Section, the Central Government directs that right of user in the said lands shall instead of vesting in the Central Government vests on this date of publication of this declaration in the Assam Gas Company Limited free from encumbrances.

LAND SCHEDULE

Laying of 600mm O D Underground natural gas pipeline from Kathalguri OCS, to Kathalguri NEEPCO Project Site.

Sl. No.	Name of Village	Mouza	Patta No.	Dag No.	Area			Remarks
					B	K	L	
1.	Bherbheri Vill.	Tipling	Wast Land	344	1	0	6	
			Annual	345	2	4	16	
			Wast Land	343	0	1	10	
			P.P.No.64	342	1	4	11	
			P.P.No.56	338	1	3	5	
			P.P.No.53	340	1	1	16	
			Wast Land	339	0	0	11	
			Total Area		9	1	15	

[No. O-12016/90/92-ONG/DU]

M. MARTIN, Desk Officer

नई दिल्ली, 15 जुलाई, 1993

क्र. घा. 1532 :-यतः केन्द्रीय सरकार को यह प्रतीत होता है कि लोकहित में यह आवश्यक है कि मारबरेटा गैस ग्रीड जिला तिनसुकिया, आसाम को प्राकृतिक गैस आयोग के लिए कुसुजान ग्रामीण क्षेत्र से मारबरेटा टि गैस ग्रीड को जाय बागानों तक, आसाम गैस कम्पनी लिमिटेड, बुधियाबाग द्वारा पाइप लाइन बिछाई जाती चाहिये।

और यतः यह प्रतीत होता है कि ऐसी लाइनों को बिछाने के प्रयोजन के लिए एतद्वारा अनुसूची में वर्णित भूमि में उपयोग का अधिकार अर्जित करना आवश्यक है।

अतः अब पेट्रोलियम आरक्षण विधेयक (भूमि में खनन के अधिकार का अर्थ) अधिनियम, 1962 (1962 का 80) की धारा 4 को उपधारा (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए सरकार ने उसमें उपयोग का अधिकार अर्जित करने का अपना आशय एतद्वारा घोषित किया है।

बतते कि उक्त भूमि में हितवन्त कोई व्यक्ति उस भूमि के नीचे पाइप लाइन बिछाने के लिए आक्षेप सक्तम अधिकारी उपर्युक्त तिनसुकिया आसाम की इस अधिसूचना को तारीख से 21 दिनों के भीतर कर सकेगा।

आर ऐसा आक्षेप करनेवाला हर व्यक्ति विनिश्चितः यह भी कबल करेगा कि क्या वह यह चाहता है कि उसकी सुनवाई व्यक्तिगत हो या कि सोचविचार व्यवसायी की मार्फत।

अनुसूची I

कुसुजान से 8' (200 एम.एम.) घ. दोपाइप लाइन मारबरेटा टि गैस गैस ग्रीड के जाय बागान के लिये पाइप लाइन बिछाना

क्र.सं.	गांव	तालुक	पाटानं.	बागनं.	बि.	एरिया	क. ल.	
1	2	3	4	5	6	7	8	9
1.	2नं. बोरबील गांव प्रथम खण्ड	माकुम	सरकार	20	0	0	7	
			मियादी 10नं.	22	0	3	17	
			मियादी 28नं.	24	0	2	8	
			मियादी 62नं.	20	0	4	6	
			मियादी 139नं.	27	0	2	11	
			मियादी 123नं.	30	0	1	13	
			मियादी 70नं.	37	1	0	14	
			मियादी 48नं.	38	0	1	13	
			मियादी 90नं.	39	2	1	18	
			मियादी 109नं.	57	0	1	17	
			जाय मियादी 1नं.	61	4	4	15	
			कुल क्षेत्रफल		12	0	19	

1	2	3	4	5	6	7	8	
2. 2 नं. बोरीबील गांव दूसरा खण्ड	माकुम	मियादी 35 नं.	120	0	2	8		
		मियादी 69 नं.	121	0	2	6		
		मियादी 36 नं.	122	1	0	3		
		सरकार	144	0	0	7		
		मियादी 150 नं.	407	0	1	19		
		मियादी 37 नं.	123	0	3	6		
		मियादी 8 नं.	408	0	2	17		
		मियादी 115 नं.	126	0	0	7		
		मियादी 49 नं.	127	0	4	19		
		मियादी 72 नं.	128	0	2	13		
		मियादी 110 नं.	129	0	4	2		
		मियादी 30 नं.	130	0	4	11		
		मियादी 106 नं.	131	0	2	3		
		मियादी 132 नं.	132	0	3	15		
		मियादी 85 नं.	133	0	1	17		
		मियादी 43 नं.	139	0	4	19		
		मियादी 85 नं.	136	0	0	12		
		मियादी 43 नं.	137	0	0	3		
		सरकार	230	0	0	11		
		कुल क्षेत्रफल		9	3	18		
		3. 3 नं. बोरीबील गांव	माकुम	मियादी 58 नं.	253	0	2	0
				मियादी 59 नं.	254	0	1	2
				मियादी 4 नं.	481	0	0	7
				मियादी 10 नं.	489	0	1	2
कुल क्षेत्रफल				0	4	11		
4. 1 नं. बोरीबील गांव प्रथम खण्ड	माकुम	सरकार	1	0	0	11		
		सरकार	5	0	0	4		
		सरकार	72	0	0	4		
		सरकार	73	0	1	4		
		सरकार	71	0	1	6		
		मियादी 77 नं.	74	0	2	0		
		मियादी 108 नं.	76	0	1	9		
		मियादी 13 नं.	77	0	0	4		
		मियादी 148 नं.	69	0	1	19		
		मियादी 54 नं.	80	0	1	2		
		मियादी 83 नं.	66	0	1	19		
		मियादी 3 नं.	82	0	3	8		
		सरकार	84	0	0	7		
		मियादी 52 नं.	86	1	0	8		
		मियादी 52 नं.	93	0	1	0		
		मियादी 52 नं.	92	0	0	13		
		सरकार	136	0	0	7		
		मियादी 87 नं.	94	0	4	6		
		मियादी 105 नं.	120	0	2	4		
		मियादी 149 नं.	118	0	1	17		
		मियादी 65 नं.	117	0	2	19		
		मियादी 39 नं.	112	0	3	15		
		मियादी 144 नं.	110	0	2	19		
		सरकार	98	0	0	7		
		मियादी 109 नं.	109	0	2	8		
		मियादी 130 नं.	105	0	3	2		
		मियादी 128 नं.	104	0	2	2		
		कुल क्षेत्रफल		9	4	4		

1	2	3	4	5	6	7	8
5. 1 नं. बोरीवाल गांव द्वितीय खण्ड			एकसना	505	0	2	13
			मियादी 120 नं.	504	0	0	4
			मियादी 50 नं.	443	0	4	1
			मियादी 8 नं.	503	1	0	6
			सरकार	502	0	0	6
			मियादी 49 नं.	500	0	1	6
			मियादी 62 नं.	444	0	1	6
			मियादी 34 नं.	449	0	2	9
			मियादी 71 नं.	524	0	0	6
			मियादी 21 नं.	445	0	0	19
			सरकार	434	0	0	6
			मियादी 137 नं.	446	0	3	1
			एकसना	448	0	2	19
			एकसना	426	0	4	12
			मियादी 122 नं.	425	0	4	3
			सरकार	423	0	2	10
			मियादी 85 नं.	422	1	0	12
			मियादी 156 नं.	421	0	3	1
			मियादी 136 नं.	420	0	3	6
			मियादी 137 नं.	419	0	0	17
			मियादी 137 नं.	406	0	0	17
			मियादी 44 नं.	407	0	3	2
			मियादी 138 नं.	409	0	0	18
		मियादी 49 नं.	410	0	1	18	
			कुल क्षेत्रफल		11	0	18
6. डिगबोई टाउन प्रथम खण्ड 5 वां पृष्ठ		माकुम	एकसना 136	1521	0	0	15
			मियादी 159 नं.	1519	0	2	13
			मियादी 374 नं.	1517	1	0	18
			कुल क्षेत्रफल		1	4	6
7. डिगबोई टाउन प्रथम खण्ड 7 वां पृष्ठ		माकुम	मियादी 164 नं.	1962	0	1	9
			एकसना 47 नं.	1968	0	2	5
			एकसना 48 नं.	1969	0	2	15
			सरकार	1970	0	2	1
			सरकार	1971	0	1	15
			एकसना 100 नं.	1972	0	0	7
			एकसना 100 नं.	1973	0	0	5
			सरकार	1958	0	2	12
			एकसना 96 नं.	1974	0	3	8
			सरकार	1975	0	2	12
			सरकार	1976	0	1	6
			एकसना 74 नं.	1978	0	1	17
			एकसना 21 नं.	1980	0	1	2
			एकसना 122 नं.	1981	0	0	6
			एकसना 122 नं.	1951	0	2	18
			सरकार	1982	0	4	8
			सरकार	1983	0	0	11
			सरकार	1984	0	3	11
			सरकार	1944	0	1	7

1	2	3	4	5	6	7	8
डिगबोई टाउन—जारी			एकसना 23 नं.	1987	0	3	3
			एकसना 39 नं.	1988	0	3	14
			एकसना 92 नं.	1933	0	0	6
			सरकार	1957	0	0	17
			सरकार	1945	0	0	10
			कुल क्षेत्रफल		9	0	5
8. डिगबोई टाउन			सरकार	2034	0	1	13
प्रथम खण्ड 8वां प्लट			एकसना 72 नं.	2043	0	0	8
			सरकार	2044	0	0	6
			सरकार	2287	0	0	3
			कुल क्षेत्रफल		0	2	10
9. 2 नं. बापुपोन गांव			एकसना	43	1	1	7
			सरकार	46	0	3	6
			सरकार	47	0	0	13
			एकसना	49	0	3	15
			सरकार	50	0	2	10
			सरकार	53	0	1	11
			एकसना	48	0	0	4
			एकसना	19	0	0	6
			एकसना	42	0	0	4
			सरकार	75	32	3	0
			कुल क्षेत्रफल		36	1	16
10. डिगबोई टाउन			सरकार	2958	0	4	14
प्रथम खण्ड 10 वां प्लट			सरकार	2959	0	3	3
			कुल क्षेत्रफल		1	2	17

[सं. मी. 12016/81/93-ओएनजी/डी यू]

एम. माटिन, ईरक अधिकारी

New Delhi, the 15th July, 1993

S.O. 1532.—Whereas it appears to the Central Government that it is necessary in the public interest that for supply of natural gas for Margherita Tea Gas Grid, District Tinsukia, Assam, Pipeline should be laid from OIL's Kushijan well to Tea Gardens of Margherita Tea Gas Grid by Assam Gas Company Limited, Duliajam.

And whereas it appears that for the purpose of laying such pipeline it is necessary to acquire the Right of User in land described in the Schedule annexed hereto.

Now therefore in exercise of the powers conferred by Sub-section (1) of section 3 of the Petroleum Pipeline (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) the Central Government hereby declares its intention to acquire the right of User therein.

Provided that any person interested in the said land may within 21 days from the date of this notification object to the laying of the pipelines under the land to the competent authority, viz. Deputy Commissioner, Tinsukia District, Assam.

And every person making such an objection shall also state specifically whether he wishes to be heard in person or by a legal practitioner.

LAND SCHEDULE

Laying of 8" (200 mm) O.D. underground natural gas pipe line from Kushijan to the tea gardens of Margherita Tea Gas Grid.

Sl. No.	Name of Village	Mouza	Patta No.	Dag No.	Area			Remarks
					B	K	L	
1	2	3	4	5	6	7	8	9
1. 2 No. Borbill Village 1st Part	Makum	Waste Land	20	0	0	7		
		P.P.No.10	22	0	3	17		
		P.P.No.28	24	0	2	8		
		P.P.No.62	26	0	4	6		
		P.P.No.139	27	0	2	11		
		P.P.No.132	36	0	1	13		
		P.P.No.70	37	1	0	14		
		P.P.No.48	38	0	1	13		
		P.P.No.90	39	2	1	18		
		P.P.No.109	57	0	1	17		
		T.P.P.No.1	61	4	4	15		
		Total:		12	0	19		
		2. 2 No. Borbill Village 2nd Part	Makum	P.P.No.35	120	0	2	8
P.P.No.69	121			0	2	6		
P.P.No.36	122			1	0	3		
Waste Land	144			0	0	7		
P.P.No.150	407			0	1	19		
P.P.No.37	123			0	3	6		
P.P.No.8	408			0	2	17		
P.P.No.115	126			0	0	7		
P.P.No.49	127			0	4	19		
P.P.No.72	128			0	2	13		
P.P.No.110	129			0	4	2		
P.P.No.30	130			0	4	11		
P.P.No.106	131			0	2	3		
P.P.No.128	132			0	3	15		
P.P.No.85	133			0	1	17		
P.P.No.43	139			0	4	19		
P.P.No.85	136			0	0	12		
P.P.No.43	137			0	0	3		
Waste Land	230			0	0	11		
Total :		9	3	18				
3. 3 No. Borbill Village	Makum	P.P.No.58	253	0	2	0		
		P.P.No.59	254	0	1	2		
		P.P.No.4	481	0	0	7		
		P.P.No.10	489	0	1	2		
		Total :		0	4	11		
4. 1 No. Birbill village 1st Part	Makum	Waste Land	1	0	0	11		
		Waste Land	5	0	0	4		
		Waste Land	72	0	0	4		
		Waste Land	73	0	1	4		
		Waste Land	71	0	1	6		
		P.P.No.77	74	0	2	0		
		P.P.No.108	76	0	1	9		
		P.P.No.13	77	0	0	4		
		P.P.No.148	69	0	1	19		
		P.P.No.54	80	0	1	2		
		P.P.No.83	66	0	1	19		
		P.P.No.3	82	0	3	8		
		Waste Land	84	0	0	7		

1	2	3	4	5	6	7	8	9
			P.P.No.52	86	1	0	8	
			P.P.No.52	93	0	1	0	
			P.P.No.52	92	0	0	13	
			Waste Land	136	0	0	7	
			P.P.No.87	94	0	4	6	
			P.P.No.105	120	0	2	4	
			P.P.No.149	118	0	1	17	
			P.P.No.65	117	0	2	19	
			P.P.No.39	112	0	3	15	
			P.P.No.144	110	0	2	19	
			Waste Land	98	0	0	7	
			P.P.No.109	109	0	2	8	
			P.P.No.130	105	0	3	2	
			P.P.No.128	104	0	2	2	
			Total :		9	4	4	
5. 1 No. Borbill Village 2nd Part			Annual	505	0	2	13	
			P.P.No.120	504	0	0	4	
			P.P.No.50	443	0	4	1	
			P.P.No.8	503	1	0	6	
			Waste Land	502	0	0	6	
			P.P.No.49	500	0	1	6	
			P.P.No.62	444	0	1	6	
			P.P.No.34	499	0	2	9	
			P.P.No.71	524	0	0	6	
			P.P.No.21	445	0	0	19	
			Waste Land	434	0	0	6	
			P.P.No.137	446	0	3	1	
			Annual	448	0	2	19	
			Annual	426	0	4	12	
			P.P.No.122	425	0	4	3	
			Waste Land	423	0	2	10	
			P.P.No.85	422	1	0	12	
			P.P.No.146	421	0	3	1	
			P.P.No.136	420	0	3	6	
			P.P.No.137	419	0	0	17	
			P.P.No.137	406	0	0	17	
			P.P.No.44	407	0	3	2	
			P.P.No.138	409	0	0	18	
			P.P.No.49	410	0	1	18	
			Total :		11	0	18	
6. Digboi Town 1st Part 5th Sheet	Makum		Annual 136	1521	0	0	15	
			P.P.No.159	1519	0	2	13	
			P.P.No.374	1517	1	0	18	
			Total :		1	4	6	
7. Digboi Town 1st Part 7th Sheet	Makum		P.P.No. 164	1962	0	1	9	
			Annual 47 No.	1968	0	2	5	
			Annual 48 No.	1969	0	2	15	
			Waste Land	1970	0	2	1	
			Waste Land	1971	0	1	15	
			Annual 100 No.	1972	0	0	7	
			Annual 100 No.	1973	0	0	5	
			Waste Land	1958	0	2	12	
			Annual 96 No.	1974	0	3	8	
			Waste Land	1975	0	2	12	
			Waste Land	1976	0	1	6	
			Annual 74 No.	1978	0	1	17	
			Annual 21 No.	1980	0	1	2	
			Annual 122 No.	1981	0	0	6	
			Annual 122 No.	1951	0	2	18	
			Waste Land	1982	0	4	8	
			Waste Land	1983	0	0	11	

1	2	3	4	5	6	7	8	9
			Waste Land	1984	0	3	11	
			Waste Land	1944	0	1	7	
			Annual 23 No.	1987	0	3	3	
			Annual 39 No.	1988	0	3	14	
			Annual 92 No.	1933	0	0	6	
			Waste Land	1957	0	0	17	
			Waste Land	1945	0	0	10	
			Total		9	0	5	
8. Digboi Town 1st Part 8th Sheet		Makum	Waste Land	2034	0	1	13	
			Annual 72 No.	2043	0	0	8	
			Waste Land	2044	0	0	6	
			Waste Land	2287	0	0	3	
			Total		0	2	10	
9. 2 No. Bapupong Village		Makum	Annual	43	1	1	7	
			Waste Land	46	0	3	6	
			Waste Land	47	0	0	13	
			Annual	49	0	3	15	
			Waste Land	50	0	2	10	
			Waste Land	53	0	1	11	
			Annual	48	0	0	4	
			Annual	19	0	0	6	
			Annual	42	0	0	4	
			Waste Land	75	32	3	0	
			Total		36	1	16	
10. Digboi Town 1st Part 10th Sheet		Makum	Waste Land	2958	0	4	14	
			Waste Land	2959	0	3	3	
			Total		1	2	17	

[No. O-12016/81/93-ONG/DU]
M. MARTIN, Desk Officer

जल भूतल परिवहन मंत्रालय
(नौवहन महानिदेशालय)
(वाणिज्य पोत परिवहन)
बम्बई, 28 जून, 1993

का. प्रा. 1533.--वाणिज्य पोत परिवहन (नाविक रोजगार कार्यालय) नियम, 1986, के नियम 3 के साथ पठित, भारत सरकार, जल भूतल परिवहन मंत्रालय की अधिसूचना सं. एस डब्ल्यू/एस डब्ल्यू एस-40/85-एस टी दिनांक 22 अप्रैल, 1988 द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए नौवहन महानिदेशक इस अधिसूचना के शासकीय राजपत्र में प्रकाशन की तारीख से दो वर्ष की समयावधि के लिए कलकत्ता पत्तन पर नाविक रोजगार बोर्ड (विदेशगामी) एतद्वारा नियुक्त करते हैं। जिसमें निम्नलिखित सदस्य हैं, अर्थात् :--

7. कप्तान बी. के. गुप्ता (भारतीय नौवहन निगम लिमिटेड, कलकत्ता)
8. कप्तान एम. जे. कात्याल (भारतीय नौवहन निगम लिमिटेड, कलकत्ता)
9. श्री के. एच. परमार (भारतीय नौवहन निगम लिमिटेड, कलकत्ता)
10. कप्तान बी. के. बेरी (इंडिया स्टीमशिप कंपनी लिमिटेड, कलकत्ता)
11. श्री एस. के. दास (इंडिया स्टीमशिप कंपनी लिमिटेड, कलकत्ता)
12. कप्तान के. के. कोहली (इंडिया स्टीमशिप कंपनी लिमिटेड, कलकत्ता)

पोत स्वामियों का
प्रतिनिधित्व करने
वाले सदस्य

1. प्रधान अधिकारी, समुद्री वाणिज्य विभाग, कलकत्ता
2. उप नौवहन महानिदेशक प्रभारी नाविक रोजगार कार्यालय
3. श्रम आयुक्त, पश्चिमी बंगाल, कलकत्ता
4. शिपिंग मास्टर, कलकत्ता
5. निदेशक, नाविक रोजगार कार्यालय, कलकत्ता
6. पत्तन स्वास्थ्य अधिकारी, कलकत्ता

सरकार का
प्रतिनिधित्व करने
वाले सदस्य

13. श्री आशुतोष बनर्जी
14. श्री साधन काजीलास
15. श्री बिमल कुमार राय
16. श्री अब्दुल मोमीन
17. श्री टी. एन. नंबीराजन
18. श्री एम. ए. सईद

नाविकों का
प्रतिनिधित्व करने
वाले सदस्य।

प्रधान अधिकारी, समुद्री वाणिज्य विभाग, कलकत्ता और उप निदेशक महानिदेशक, प्रभारी नाविक रोजगार कार्यालय, कलकत्ता पूर्वोक्त बोर्ड के क्रमशः अध्यक्ष और उपाध्यक्ष होंगे। निदेशक, नाविक रोजगार कार्यालय पूर्वोक्त बोर्ड के सदस्य/सचिव होंगे।

[सं. 25 (2) सी.आर/90]
ए० कन्नन, उप निदेशक महा निदेशक

MINISTRY OF SURFACE TRANSPORT

(Directorate General of Shipping)

Bombay, the 28th June, 1993

(MERCHANT SHIPPING)

S.O. 1533 :- In exercise of the powers conferred by rule 3 of the Merchant Shipping (Seamen's Employment Officers) Rules, 1986, read with the Notification of the Government of India in the Ministry of Surface Transport No. SW/MWS-2240/85-MT dated the 22nd April, 1988, the Director General of Shipping hereby appoints, Seamen's Employment Board (Foreign Going) at the port of Calcutta for a period of two years with effect from the date of publication of this notification in the Official Gazette, consisting of the following members namely :-

1. The Principal Officer
Mercantile Marine Department,
Calcutta.
2. The Deputy Director General of
Shipping,
Incharge of the Seamen's Employ-
ment Office,
3. The Labour Commissioner,
West Bengal,
Calcutta.
4. The Shipping Master,
Calcutta.
5. The Director,
Seamen's Employment Office,
Calcutta.
6. The Port Health Officer,
Calcutta.

Members,
representing
Government

7. Captain V.K. Gupta,
(Shipping Corporation of India Ltd.,
Calcutta).
8. Captain M.J. Katyal,
(Shipping Corporation of India Ltd.,
Calcutta).
9. Shri K.H. Parmar,
(Shipping Corporation of India Ltd.,
Calcutta).
10. Captain V.K. Berry,
(India Steamship Company Ltd.,
Calcutta).
11. Shri S.K. Dass,
(India Steamship Company Ltd.,
Calcutta).
12. Captain K.K. Kohli,
(India Steamship Company Ltd.,
Calcutta).

Members
representing
shipowners.

13. Shri Ashutosh Banerjee
14. Shri Sadhan Kanjilal
15. Shri Bimal Kumar Roy
16. Shri Abdul Momin
17. Shri T.N. Nambirajan
18. Shri M.A. Sayeed

Members
representing
Seamen

The Principal Officer, Mercantile Marine Department, Calcutta and the Deputy Director General of Shipping, Incharge of the Seamen's Employment Officer, Calcutta shall respectively be the Chairman and the Vice-Chairman of the aforesaid Board. The Director, Seamen's Employment Office Calcutta shall be the Member Secretary of the aforesaid Board.

[F. No. 25(2)CR/90]
A. KANNAN, Dy. Director
General of Shipping

नागर विमानन और पर्यटन मंत्रालय

(नागर विमानन विभाग)

नई दिल्ली, 28 जून, 1993

का.क्रा. 1534---सरकारी स्थान (अप्रतिष्ठित अधिकारियों की वेद-खली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, दिनांक 8 नवम्बर, 1973 की अधिसूचना संख्या सा.घा. 2369 में उल्लिखित अधिकारियों के द्वारा, नीचे दी हुई तालिका के कालम (1) में वर्णित गए अधिकारियों को, सरकार के राजस्वित अधिकारियों के समकक्ष अधिकारी होने के नाते उक्त अधिनियम के प्रयोजन के लिए संपदा अधिकारी के रूप में नियुक्त करते हैं जो कि उक्त तालिका के कालम (2) में निर्दिष्ट सरकारी स्थानों के अंतर्गत अपने-अपने अधिकार क्षेत्र की सीमाओं के भीतर, उक्त अधिनियम द्वारा प्रयुक्त उसके तहत संपदा अधिकारी को प्रदत्त शक्तियों का प्रयोग करेंगे और उन्हें ऐसे गए कर्तव्यों का निष्पादन करेंगे।

तालिका

अधिकारी का पदनाम	सरकारी स्थानों की श्रेणियाँ और अधिकार-क्षेत्र की स्थानीय सीमाएँ
1	2
1. कार्मिक प्रबंधक या उप-कार्मिक प्रबंधक या प्रबंधक बिधि अथवा कार्मिक अधिकारी एयर इंडिया, बंबई।	महाराष्ट्र राज्य में, मालिक, पट्टाधारी या लाइसेंसधारी के रूप में एयर इंडिया के सभी परिसर और वे सभी परिसर जो एयर इंडिया द्वारा या उसकी ओर से अधिग्रहीत किए गए हैं।
2. कार्मिक प्रबंधक या उप-कार्मिक प्रबंधक या कार्मिक अधिकारी एयर इंडिया, मद्रास।	तमिलनाडु राज्य में मालिक, पट्टाधारी या लाइसेंसधारी के रूप में एयर इंडिया के सभी परिसर और वे सभी परिसर जो एयर इंडिया द्वारा या उसकी ओर से अधिग्रहीत किए गए हैं।
3. कार्मिक प्रबंधक या उप-कार्मिक प्रबंधक या कार्मिक अधिकारी, एयर इंडिया कलकत्ता।	पश्चिम बंगाल राज्य में मालिक, पट्टाधारी या लाइसेंसधारी के रूप में एयर इंडिया के सभी परिसर और वे सभी परिसर जो एयर इंडिया द्वारा या उसकी ओर से अधिग्रहीत किए गए हैं।
4. कार्मिक प्रबंधक या उप-कार्मिक प्रबंधक या कार्मिक अधिकारी, एयर इंडिया, दिल्ली।	दिल्ली मंत्र-शासित क्षेत्र में मालिक, पट्टाधारी या लाइसेंसधारी के रूप में एयर इंडिया के सभी परिसर और वे सभी परिसर जो एयर इंडिया द्वारा या उसकी ओर से अधिग्रहीत किए गए हैं।

[एफ. न. ए. नो. 18050/92/92-एफ]

जी. जे. जैनन, प्रवर सचिव

MINISTRY OF CIVIL AVIATION & TOURISM

(Department of Civil Aviation)

New Delhi, the 28th June, 1993

S.O. 1534 :—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (47 of 1971) the Central Government hereby appoints the officers mentioned in column (1) of the Table below, in addition to the officers mentioned in the Notification No. S.O. 2369 dated the 8th November, 1973, being officer equivalent to the rank of Gazetted Officer of Government to be estate officer for the purpose of the said Act, who shall exercise the powers conferred and perform the duties imposed on the estate officer by or under the said Act within the limits of their respective jurisdiction in respect of the public premises specified in column (2) of the said Table.

TABLE

Designation of the Officer	Categories of Public Premises and local limits of jurisdiction
(1)	(2)
1. Personnel Manager or Deputy Personnel Manager or Manager-Legal or Personnel Officer, Air-India, Bombay.	In the State of Maharashtra all premises belonging to Air India as owner, lessee or licensee and all premises which are requisitioned by or on behalf of Air India.
2. Personnel Manager or Deputy Personnel Manager or Personnel Officer, Air India, Madras.	In the State of Tamil Nadu all premises belonging to Air India as owner, lessee or licensee and all premises which are requisitioned by or on behalf of Air India.
3. Personnel Manager or Deputy Personnel Manager or Personnel Officer, Air India, Calcutta.	In the State of West Bengal all premises belonging to Air India as owner, lessee or licensee and all premises which are requisitioned by or on behalf of Air India.
4. Personnel Manager or Deputy Personnel Manager or Personnel Officer of Air-India, Delhi.	In the Union Territory of Delhi all premises belonging to Air-India as owner, lessee or licensee and all premises which are requisitioned by or on behalf of Air India.

[F. No. A.V. 18050/92/92-AA]
V.J. MENON, Under Secy.

श्रम मंत्रालय

नई दिल्ली, 21 जून, 1993

का. आ. 1535 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स मनीलाल पटेल और कम्पनी वर्कर्स के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, नं. 1 वर्कर्स, के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-6-93 को प्राप्त हुआ था।

[खंडा एन-31011/18/90-आई आर. (विधि)]
बी.एम. बेदिब, डेप्ट. अधिकारी

MINISTRY OF LABOUR

New Delhi, the 21st June, 1993

S.O. 1535.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 1 Bombay as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Manilal Patel & Co., Bombay and their workmen, which was received by the Central Government on the 17-6-93.

[No. L-31011/18/90-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL No. : 1, AT BOMBAY

PRESENT :

Justice Shri. R. G. Sindhakar Presiding Officer.

Reference No. : CGIT-59 of 1991

PARTIES :

The Employers in relation to the Management of
M/s. Manilal Patel & Co., Bombay.

AND

Their Workmen

APPEARANCES :

For the Employer.—Shri Shroff Advocate.

For the Workmen.—Shri Wagh Advocate.

INDUSTRY : Port and Docks, STATE : Maharashtra
Bombay, dated the 3rd day of June, 1993

AWARD

The Central Government had by letter dated 16-07-1991 made the following reference to this Tribunal.

"Whether the management of M/s. Manilal Patel & Co., Bombay operating as Clearing and Forwarding Agent in Major Port of Bombay are justified in refusing to accept the charter of demands, Annexure—'A' of the Transport and Dock Workers' Union, having their workmen as not port and dock workers? If not, what relief the workmen are entitled to?"

Notices were issued to both the parties, namely M/s. Manilal Patel & Co., and the Union representing the workmen.

A correspondence is now submitted by the company, on 12-05-1993 that it has signed a settlement on 9th April 1992 with the Rashtriya Cotton Kamgar Union under section 2(p) of the Industrial Disputes Act, 1947 in the presence of the Conciliation Officer Shri G. M. Shaik, Assistant Commissioner of Labour, and they have produced at Annexure—'A' a xerox copy of the said settlement.

It has been stated in the said submission that the Transport and Dock Workers' Union which represented at the relevant time the workmen had failed at the time of the conciliation proceedings in respect of the charter of demands and therefore, this reference came to be made. The Management further stated that its workmen has subsequently joined the Rashtriya Cotton Kamgar Union, and all disputes with the company regarding their demands have been settled.

Mr. Wagh appearing on behalf of the Transport and Dock Workers' Union filed a statement today, stating that the workmen covered by the reference are not now members of the Transport and Dock Workers' Union, at whose instance the reference came to be made to this Tribunal. He further stated that since the dispute is now settled as stated by the management and as endorsed by the copy of the settlement, his union is no more interested in proceeding further in the matter and prayed that the present matter be disposed of by passing an award accordingly.

From the copy of the settlement, it appears that with the intervention of the Assistant Labour Commissioner Shri. Shaik, the dispute between the management and the workmen has been settled. It also makes a mention of this pending reference is disposed of.

Under the circumstances, award accordingly, and the reference is disposed of.

R. G. SINDHAKAR, Presiding Officer

नई दिल्ली, 22 जून, 1993

का. अ. 1536.—औद्योगिक विवाद, अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्तर्गण में, केन्द्रीय सरकार हलदिया डाक कॉम्प्लेक्स हलदिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच अनुबंध में विनिर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-6-93 को प्राप्त हुआ था।

[संख्या एन-32012/8/89-आई आर. (विधि)]

जी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 22nd June, 1993

S.O. 1536.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Haldia Dock Complex, Haldia and their workmen, which was received by the Central Government on 21-6-93.

[No. L-32012/8/89-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 33 of 1989

Parties :

Employers in relation to the management of Haldia Dock Complex, Haldia.

AND

Their Workmen.

Present :

Mr. Justice Manash Nath Roy, Presiding Officer.

Appearance :

On behalf of Management.—Mr. R. Chowdhury, Assistant Manager (P & I.R.).

On behalf of Workman.—Mr. K. K. Roy Ganguly (since deceased), vice president of Calcutta Port & Shore Mazdoor Union and Mr. S. P. Banerjee, an employee of the Calcutta Port Trust.

STATE : West Bengal

INDUSTRY : Port

AWARD

If the Management of Haldia Dock Complex (hereinafter referred to as the said Employer), in dismissing the services of Shri Hadhab Bag (hereinafter referred to as the said employee), ex-electrician of P&E Division, with effect from January 7, 1986, was justified, was in issue, in this case, which has been referred for adjudication by an order of Reference No. L-32012/8/89-IR (Misc.) dated October 9, 1989, by the Appropriate Government, in exercise of their powers under section 10(1)(d) and sub-section (2A) of the Industrial Disputes Act 1947, (hereinafter referred to as the said Act) and in addition thereto, the Reference indicates, if not, to what relief the said employee was entitled to ?

2. On service of usual notices, the parties to the dispute entered appearance and filed their pleadings, apart from tendering their respective evidence, which would be dealt with and referred to, hereinafter.

3. It would appear from the Written Statement filed on May 10, 1990 that the said employee claimed to be appointed as an Electrician, under the Manager, Plant & Equipment Division of the said employer, by an order dated November 18, 1980, in terms of Rule 8 of the Calcutta Port Commissioners' Employees' (Disciplines and Appeal) Rules, 1964 (hereinafter referred to as the said Rules), which suspended him with effect from November 18, 1980 and following such suspension, a Memorandum of Charge Sheet dated January 16, 1981/February 2, 1981, was issued on the basis whereof, a Departmental Enquiry was held in respect of 4 charges as mentioned in the Articles of charges, which is part of Ext. M-6. By that exhibit, the said employee, on being informed about the Articles of Charges and statements in support of those Articles of Charges, was directed to submit, within 10 days of the receipt thereof, the statement of his defence and also to indicate, if he desired to be heard in person. He was also informed that enquiry will be held, only in respect of those Articles of Charges, as were not admitted and as such, he was directed to specifically admit or deny the Articles of Charges. He was further informed that if written statement of defence was not filed on or before the date as specified, the enquiry may be held against him, ex-parte.

4. It was the case of the said employee that thereafter, the Deputy Chairman of the said employer, having agreed with the findings of the Enquiry Officer, imposed a punishment of dismissal on him from service, which was to be effective on and from January 7, 1986. It should be noted that the Enquiry Officer, found the said employee guilty of all the charges and there was another employee by the name of Sri Mukul Sen, who was also charged of offences and was found guilty of charges 2 and 5. It was the further case of the said employee that over his dismissal, an Industrial Dispute was raised, claiming the action as taken, to be unjustified and more particularly, because, the Appeal as preferred by him, was also rejected. From the recordings as made herein, it would appear, what were the terms, which were referred for adjudication, to the Tribunal.

5. It was the case of the said employee that he was a member of Calcutta Port & Shore Mazdoor Union (hereinafter referred to as the said Union) and in 1990, he was elected as the Working Committee Member of the Haldia Unit of the said Union. It was his further case that as such Working Committee Member, he used to take keen interest and active part in formulating, as well as in implementing decisions of the said Union and in the month of October 1980, some agitational programmes were organised by the said Union, for the purpose of setting some outstanding demands, including continuation of the existing transport facilities, at the relevant time. It was his case that the said employer took no initiative either to resolve the dispute or to negotiate on the same with the said Union, for amicable settlement and on the other hand, they took unilateral step or behaved in a way, intending to curtail some of the transport facilities, as enjoyed by the employees.

6. It was the further case of the said employee that, to protect the employees against such arbitrary action of the said employer and to prevent any curtailment of the facilities in respect of the above, the said Union organised a massive rally on October 24, 1980, at the Haldia Dock Complex and represented the case of the employees, before the Management. The said employee has also mentioned to be one of the representatives, to lead the said Rally along with others and he has said that although the said employer gave a patient hearing to those, who lead the deputation on October 24, 1980 and assured to look into the genuine grievances of the employees, but after sometimes from that date, he along with other leaders, who lead the deputation, were suspended from the pay and duty, as a consequence whereof, the normal workings of Haldia Dock Complex, were suspended.

7. It was his case further that from the suspension order, as delivered to him along with other deputationists, it would appear that the management, to protect their malafide action to be a bonafide one and to curtail the activities of the Trade Unionists, followed anti labour policies, by taking victimising attitude and on that basis, issued orders of suspension, connecting them with a Criminal case under section 143, 341 and 506 of the Indian Penal Code and as such, the said employee has said Order No. 6 dated October 22, 1980 and signed by the General Manager of the Dock Complex, without putting any date, was delivered, after 16-15 hours on October 24, 1980. It has been stated that although there was total stoppage

of work at Haldia Dock Complex, emanating from suspension of the officials as mentioned earlier, in the afternoon of October 24, 1980, no steps were taken by them to open any dialogue for bringing about a settlement or to restore normalcy at Haldia Dock Complex. It has further been alleged that due to the evasive role taken by the Management of the concerned Complex and necessity of restoring normalcy at the Complex, particularly in relation to the requirement of Haldia Oil Refinery, the said Union, made representations to the Hon'ble Chief Minister, West Bengal, and Hon'ble Labour Minister, Government of West Bengal and asked for their intervention. It has been stated, with their intervention, an understanding was reached on October 27, 1980 at Calcutta with the said Union and a programme was taken to bring normalcy at Haldia Dock Complex from October 28, 1980.

8. The said employee has stated, the Leaders of the said Union were provided with transport facilities by the Chairman of the Calcutta Port Trust on the night of October 27, 1980, so that they could reach Haldia for implementing the understanding and to bring about normalcy at Haldia from October 28, 1980 and Sri Memlal Chatterjee, Joint Secretary of the said Union, along with others, proceeded to Haldia from Calcutta. It has been stated that on the morning of October 28, 1980, while the General Manager of the concerned Dock Complex was having discussions with the representatives of the said Union, who went from Calcutta, for implementing the understanding as mentioned above, at the Bunglow of the General Manager, a group of officers of the concerned Dock Complex, along with outsiders came to the Dock of the said Complex, with a view to operate the same for the purpose of giving entry to a vessel. This, according to the said employee, was the unwarranted incident, which caused serious disturbance and a clash followed with serious altercations and scuffles took place between the outsiders brought by Management and the striking workers, who were present there, and as a result thereof, some of the Officers of Haldia Dock Complex, received physical injuries and the incident occurred, inspite of the efforts being made, to bring about normalcy. The said employee has of course stated that on October 28, 1980, the Hon'ble Minister as mentioned above, once again intervened and an agreement was arrived at on that date and in fact, normalcy was brought in Haldia on and from October 30, 1980.

9. It was the further case of the said employee that in accordance with the terms of agreement, the suspension orders served on the afternoon of October 24, 1980 and given effect to from that date was vacated and he was allowed to resume his duty from October 30, 1980, along with other suspended persons. It was his case that in the agreement as reached on October 29, 1980, no condition was imposed in respect of the withdrawal of the suspension, but in the order of November 4, 1980, the General Manager of the said Complex, while revoking the order of suspension from October 30, 1980, imposed certain conditions, in violation of the terms and spirit of the above agreement and he alleged that the conditions as imposed, were afterthoughts and they would, on the face of them, explain the mala fide intention of the said employer.

10. In respect of the incident as happened on October 28, 1980, it has been indicated, some of the officers of the Haldia Dock Complex, were alleged to have sustained physical injuries. It has also been stated, on the statement of October 28, 1980, that in respect of the incident which took place on October 28, 1980, the law will take its own course. Accordingly, the said employee has said that a F.I.R. bearing No. A/d 0017 dated October 28, 1980, was filed by the Manager (P & I.R.) of the concerned Complex, to the Officer-in-Charge, Haldia Police Station, alleging specifically, charges of physical assault by the said employee, but he has said that following the agreement, he was allowed to resume his duties on October 30, 1980. It was his case that in accordance with the said First Information Report, Case No. 15 of 28-10-1980, under sections 147, 341 and 397 I.P.C. was initiated and in the process, there was a Police Investigation and at that point of time, Assistant Manager (Admn.) of Haldia Dock Complex, made a statement on November 15, 1980, to the Officer-in-Charge of the Police Station and the Police, after conclusion of the Investigation, submitted Charge Sheet in respect of the offences under sections 147, 341, 323 and 235 of the Indian Penal Code, against the said employee and aforementioned Sri Mukul Sen. It has further been

alleged that at a subsequent date, after resorting of normalcy at the Haldia Dock Complex, the General Manager concerned, by his order dated November 18, 1980, placed the said employee on suspension from pay and duty and the Memorandum of Charge Sheet as indicated earlier, was issued.

11. The said employee has said that by an order of September 8, 1981, the Deputy Chairman of the concerned Complex, appointed Sri Subhas Banerjee, Manager (Finance) of the concerned Complex, as the Enquiry Officer and Sri G. K. Roy, was appointed as a Presenting Officer. He has stated that after continuing the proceedings upto July 21, 1982, the said Deputy Chairman, in partial modification of his order as aforesaid, appointed Sri A. K. Majumder, Manager, T.O. Division, as the Enquiry Officer, in place of the aforesaid Sri Subhas Chandra Banerjee. He has alleged that no reasons were recorded for such change and according to him, the proceeding of the enquiry was held jointly and was completed on January 31, 1985 and as stated earlier, said Enquiry Officer found him guilty of all the charges and filed his report on September 28, 1985 and thereafter, the Deputy Chairman of the Haldia Dock Complex, having agreed with the findings of the Enquiry Officer, issued a Show Cause Notice as stated earlier, on October 17, 1985 and he has replied to that Show Cause, on December 30, 1985. It was his case that on consideration of his representations as above, the Deputy Chairman concerned, finally issued the order of dismissal on January 7, 1986 and against such order, an appeal was preferred by him on February 3, 1986, but that appeal was not entertained by the Central Government, as would appear from the communication of November 15, 1986.

12. It was the case of the said employee that such order of suspension dated October 22, 1980 and November 18, 1980, as issued, in terms of Rule 8 of the said Rules, were void in law, as the rules mentioned, do not empower the General Manager, of the concerned Dock Complex, to be the authorised person, for execution of the Regulations framed thereunder. He has further stated that no amendment, empowering the said General Manager, has been incorporated by the Board of Trustee, on the basis of any meeting and as such, the order of suspension and the consequent actions as taken thereon, were illegal void and unjust.

13. After narrating the circumstances, on which the present Reference was made, the said employee, has said, though by order dated October 22, 1980, he was placed under suspension from pay and duty with effect from October 20, 1980 and was allowed to resume duty with effect from October 30, 1980, no subsistence allowance was paid to him, but there was a deduction in his wages, treating him for the period as mentioned above, as on strike. This, the said employee has stated, to have been done consistent with the action as taken in respect of other employees, who stopped the work from October 24, 1980, following suspension of the Union Leaders. He has alleged that even ignoring the fact that he was on duty on October 24, 1980 and again resumed on October 30, 1980, 7 days wages against 6 days were deducted from his salary. It was his further case that an independent Memorandum of Charge Sheet was issued against him, following his suspension from duty with effect from October 18, 1980, but the Disciplinary proceedings, were held jointly and that too, without any specific order from the authorities concerned, as required under the Calcutta Port Commissioners Employees (Discipline and Appeal) Rules 1965. Thus, the said employee has claimed the disciplinary proceedings, as held jointly, to be void, illegal and irregular and contrary to the provisions of natural justice. He has further alleged that the change of the Enquiry Officer in the manner as indicated, was not only motivated, for the purpose of victimising him, but such action was also illegal. It was his case that from the order of November 4, 1980, as issued by the General Manager of the concerned Complex and the suspension order dated November 18, 1980, it would appear that the terms of the agreement dated October 29, 1980, were violated and the actions of the said employer in this case, were nothing but afterthoughts and were motivated, to victimise him, for his Trade Union activities, as mentioned earlier.

14. The said employee has further stated that if the incident of physical assault causing injury to officers on October 28, 1980 was a fact. The management of the concerned Complex would not have definitely agreed to allow him to resume his duty on October 30, 1980, particularly when, the justification of the alleged misconduct on his part, was to

be unbecoming of an employee. So, the said employee, has said that it is proved beyond any doubt that the said order of suspension dated November 30, 1980, was an afterthought and a motivated one and the terms of the agreement dated October 29, 1980, were sought to be violated, not only for victimising him, but also for victimising other Leaders, and for collateral reasons.

15. The said employee has agreed that he could not prove his innocence in the Criminal proceeding as brought and as indicated earlier, he was convicted, but considering the circumstances, his age, character and antecedents, the learned Magistrate concerned, was pleased to release him on Provisions of good conduct. He has further stated that the Memorandum of Charge Sheet, following the order on Charge Sheet dated October 18, 1980, was issued as mentioned earlier and the Disciplinary proceeding was started on September 13, 1981, but the same was kept hanging/pending, till January 1, 1985 and further, the findings of the Enquiry Officer, were delayed till September 28, 1985 and the final order, removing him from services, was issued on January 7, 1986 and from such fact also, the motive of the said employer i.e. to victimise him, would also be evident. He has further stated that his suspension order was revoked on October 22, 1986 and as stated, he was allowed to join his duties on October 30, 1980, by an order dated November 4, 1980 and in that order, some conditions were imposed and according to him, if the said employer had any bona fide intention in dealing with him for his conduct, they should have allowed him to continue with the duty from November 1, 1980. He has further indicated, in the letter dated November 4, 1980, a condition, to keep watch on his conduct, for a period of 3 years, was imposed and that according to him, clearly explained the conduct and attitude of the said employer.

16. According to the said employee, on scrutiny, the proceeding was initiated, the enquiry was held, lent the order finding him guilty of the charges, were not only erroneous, but they were baseless and contrary to all norms of Natural Justice. He has further stated that any misconduct against him, has not been proved duly or beyond any reasonable doubt and as such, punishment as imposed on him, cannot be sustained and thus, the same should be set aside.

17. The said employer, by their written statement, filed on January 30, 1991, stated that the dispute as referred, should not be adjudicated, as on the dismissal of the said employer, before the Assistant Labour Commissioner (Central), Calcutta-23, they initially submitted their comments and thereafter, the said Union did not press their claim and finally, the said Assistant Labour Commissioner, treated the matter as closed on September 19, 1987. The present Reference, as would appear, was made under section 10(1)(d) read with sub-section 2A of the said Act and it was the claim of the said employer that in view of the facts as stated above, the said section 2A will have no application and as such also, the Reference should be held to be invalid. The above exceptions, to my mind are not material. The said employee, of his own, could raise the dispute afresh and it has been indicated that in October 1988, the said employee, sought to raise the present dispute in respect of his dismissal from service afresh, to which also, the said employer, filed their written representation and the case of the said employer, was contested by the said employee in respect of the interpretation of the terms of settlement dated October 29, 1980 and the quantum of punishment as imposed on him. It would appear from the facts as stated hereinafter and the documents/orders as disclosed, that the said employee was found guilty under section 248(2) of the Code of Criminal Procedure, on charges under sections 148/325 of the Indian Penal Code, but he was not sentenced by the Learned Trying Magistrate and was released on Probation of good conduct and on the recommendations of the Probationary Officer, the re-instatement of the said employee was not made and it has been stated that in absence of any statutory obligation on the part of the said employer, the question of re-instatement of the said employee, did not arise. It has been indicated further that the concerned Conciliation proceedings, ended in a failure and dispute, which was sought to be raised by the said employee, to the effect as indicated above, was not really referred for adjudication and as such also, the Reference in this case, was claimed to be bad in law. While on the question of raising the dispute, in the manner as indicated and about the validity of the manner in which the Reference was made, I am of the view that the points as urged, have little substance.

18. The statements as contained in the written statement of the said employee were not really denied, more particularly in respect of the statements contained in paragraphs 1 to 5, but they were stated to be matters of record and against paragraph 6 of his written statement, the statement, as indicated earlier, have been reiterated and the said employer has said that allegations contrary thereto, are not admitted.

19. It has been stated by the said employer that the claim in respect of transport facilities or any violation thereto, really took place and as a result thereof, the Criminal Proceedings as indicated, were initiated against the said employee and 5 others. It has further been indicated that on the basis of the Criminal Proceedings, which were under sections 143/341/506 I.P.C. and related to the incident as happened on October 4, 1980, the then General Manager of the Haldia Dock Complex, by an order dated October 22, 1980, suspended the said employee under the said Rules and similar orders, were also passed in respect of other 5 employees. It was the case of the said employer that as a consequence of that suspension, there was a strike at Haldia Dock Complex from October 24, 1980, which ultimately lead to acute shortage of Oil supplies to the Haldia Refinery and it was decided, at a meeting held on October 27, 1980, in presence of the General Manager of the said Dock Complex, Additional Suptd. of Police, Tamluk and representatives of the said Union that the Officers and willing staff, would operate the tugs to go out in the river, for assisting the berthing of one Oil Tanker at the oil jetty and consequent thereto, Sri V. S. Karkare, the then Manager, Marine Operation Division, Captain R. Kumar, the then Deputy Manager, Managing Operation Division, Sri Somesh Chandra Chakraborty, the then Assistant Manager Administration, Sri P. K. Dutt, the then Junior Assistant Manager, P & E Division, Sri B. N. Roy, the then Junior Assistant Manager P & E Division, Sri S. S. Sinha Roy, the then Junior Assistant Manager, P & E Division and Sri J. Chakraborty, the then Junior Assistant Manager, P & E Division, were proceeding towards the Dock entrance on the Bundh Road, which connects the said Dock Complex Township with the Dock entrance, to attend Official duties and then, at about 09.15 Hrs. on October 28, 1980, they were prevented from proceeding further on the basis of barricades raised by stone, some Red Flags and other persons. It was the case of the said employer that being unable to proceed further, the officers, as mentioned above, were returning back on foot, when a group of persons including the said employee, arrived in a Bus and started assaulting them. It has been alleged that while the said employee and few others assaulted Sri Somesh Chandra Chakraborty, who is at present, the General Manager (N & S), Haldia Dock Complex, others in a group, assaulted the other officers. It has been stated that as a result of the above, the said Sri Chakraborty sustained serious injuries on his forehead and face and other officer, Sri Karkare was seriously injured with marks of assault on his body and arms. It has also been stated that both of the two officers were admitted to the Port Hospital at Haldia, for treatment and as per Medical reports, the extent of injury sustained by Sri Chakraborty were as under :—

"Multiple injuries due to assault by Shri Madhub Ch. Bag and others (as stated by patient) in front of the PIM Quarters today at about 0920 a.m.

O/E

Deep Cut (scalp deep) on forehead about 2-1/2 inch contusion and laceration on right wrist and right forearm and right hand. Cut of lower lip about 1 inch. Detachment (almost falling) of lower right lateral incisor tooth."

20. It was the case of the said employer that immediately after such incident, the then Manager, P. & I.R. of the said Complex, by his writings dated October 28, 1980, made a complaint to the Haldia Police Station and on the basis thereof, the State initiated Criminal proceeding against the said employee and one Mukul Kumar Sen, being G.R. Case No. 1020 of 1980. It has been stated by the said employer that as Industrial unrest had cropped up and persisted, that was sought to be resolved at the intervention of the Hon'ble Chief Minister, West Bengal and in a meeting, where he was present along with Hon'ble Labour Minister and the representatives of the said Union and so also the Management and as held on October 29, 1980, the said employer,

as a gesture of good relationship, agreed to withdraw the Police case and suspension order against the workmen concerned and further, agreed to allow them to resume their duties at once, apart from agreeing that the existing transport arrangements for the employees, would continue and there should be no agitation on that account. It has further been stated that so far the incident that took place on October 28, 1980, it was also agreed by the parties, at that meeting, that the law would take its own course.

21. It was the further case of the said employer that consequent to such arrangement as reached on October 28, 1980, suspension order dated October 22, 1980, as issued against the said employee and 5 others and upto commencement of the Criminal Proceedings, relating to the incident of October 4, 1980, were revoked and employees were allowed to join their duties from October 30, 1980. It was the case of the said employer that the concerned case being G.R. Case No. 1261 of 1980, relating to the incident of October 29, 1980, came up before the Sub-Divisional Judicial Magistrate, Midnapore and by Judgement and order dated December 7, 1985, it was decided *inter alia* amongst others that "the accused Madhab Bag, be and is hereby found guilty under section 248(2) of the Code of Criminal Procedure of the charges under section 148/325 of the Indian Penal Code and be convicted, but, considering the circumstances in which the offence was committed and also the age, character and antecedents, it was expedient that a report to be called for from the Probation Officer, Tamluk, as to the fixed place of abroad, present occupation and for other informations in respect of the said employee by December 21, 1985 and it was further directed that he was to appear before the Court on that date, to receive further orders in the matter. Against such determination, the said employee preferred an Appeal, before the Learned Additional Session Judge, Midnapore, being Criminal Appeal No. 8 of 1986 and by the Judgement and Order dated September 20, 1986, the said Court was pleased to dismiss the Appeal and confirm the judgement and order, as passed by the Learned Sub-divisional Judicial Magistrate, Tamluk.

22. It has been stated that in the meantime, the said Sri Chakraborty recovered from his injuries and ailments and by an order dated November 15, 1980, he made a complaint to the Officer-in-Charge, Haldia Police Station narrating the incident that took place on October 28, 1980 and forwarded a copy of that report to the General Manager of the Haldia Dock Complex and also to the Manager, P.U.I.R., for information and for taking necessary action. It was the case of the said employer that the General Manager, had, after considering the materials and records, by an order of November 18, 1980, placed the said employee under suspension with immediate effect, in contemplation of Disciplinary Proceedings and ultimately, he being the disciplinary authority, in respect of the said employee, submitted a charge sheet and an enquiry was proposed to be held against the said employee under Rule 11 of the said Rules and on the basis of the Charge Sheet, it would appear that the following charges were levelled against him, and the said employee was asked to submit his Written Statement, within the days as specified. The Articles of charges are quoted hereunder:—

Article of Charge—I:

That the said Shri Madhab Ch. Bag, Electrician assaulted Shri Somesh Chakraborty, Asstt. Manager (Admn.) on 28-10-80 morning while he was proceeding on official duty. This is an act which is subversive of discipline and is a gross misconduct.

Article of Charge—II:

That the said Shri Madhab Ch. Bag, Electrician used abusive languages "Sala Kano Asschile" and misbehaved with the officers named in the statement of imputations which is a grave mis-conduct.

Article of Charge—III:

That the said Shri Madhab Ch. Bag, Electrician resorted to and abetted an illegal strike resulting into coercion and prevented the officers mentioned in the statement of imputations marked Annexure-II from their attending to official duties.

Article of Charge—IV:

That the said Shri Madhab Ch. Bag, Electrician incited a group of people to offence against officers who were proceeding on official duty on 28-10-80 morning.

23. The said employee, filed his written statement of defence on the concerned Charge Sheet and it has been stated that after a full and detailed enquiry, the said employee was found guilty by the Enquiry Officer, as appointed, of misconduct, for which he was charged and the Deputy Chairman, after considering such report and materials on record, agreed with the findings as made and to the effect that the said employee was guilty of the charges as mentioned above. On that, it has been stated that on October 17, 1985, the Deputy Chairman proposed to impose the penalty of dismissal of the said employee from the services, on which, representation was made by the said employee and on consideration of the same, he came to the conclusion that the said employee, has not put forward any satisfactory reasons, as to why, the proposed punishment should not be inflicted on him and he had decided to dismiss the said employee, from services with immediate effect. Consequent thereto, it was stated, that by an order dated January 7, 1986, the said employee was dismissed from services with immediate effect and against such order of dismissal, the said employee preferred an Appeal under the said Rules. But, the Appellate Authority was the Chairman of the Board of Trustees for the Port of Calcutta and as in the meantime, the Deputy Chairman Haldia Dock Complex, who was the Disciplinary Authority, became the Chairman of the Port Trust, so according to Rule 25 of the said Rules, the Appeal was forwarded to the Central Government, which was deemed to be the Appellate Authority, in the circumstances of the case. It has been indicated that the Appellate Authority, by an order of November 17, 1986, upheld the order of dismissal and rejected the Appeal as preferred by the said employee.

24. In respect of the statements as contained in paragraphs 7, 8 and 9 of the statement of the said employee, the said employer has not admitted any statement, which are contrary to the records and inconsistent therewith.

2. The said employer, apart from reiterating the statements as recorded earlier, has stated that the said employee and 5 other employees were placed under suspension by the order dated October 22, 1980, because the Criminal case arising out of the incident of October 4, 1980, was pending and as the said employee along with others, resorted to violence and the said employer could not accede to the unjustified demand, which resulted to stoppage of work from October 24, 1980, the actions as indicated, were taken. The subsequent steps or facts have already been indicated by the said employer and after reiterating them, they have said that since the points, that the said employee has sought to raise, are not the subject matter of the present Reference, so, save as aforesaid, all other allegations are denied and in particular, it has been denied that they brought any outsider, as alleged by the said employee. It has further been stated that the said employee, along with 5 others, was placed under suspension by an order of October 22, 1980, in connection with such incident, which involved criminal offence and which took part on October 4, 1980. In any event, it has been pointed out that the said order of suspension, which related to the incident of October 4, 1980, is not the subject matter of the present Reference and this Reference, arose out of an order of suspension, which was issued on November 18, 1980 and thereafter, followed by the Charge sheet to the said employees and Sri Mukul Sen. It has further been stated by the said employer that the actions as taken, were neither afterthought or malafide, as alleged. They have pointed out that Rule 11(3), of the said Rules, duly authorised the Disciplinary authority, to appoint an Enquiry Officer and in exercise of such power, the Deputy Chairman, being the competent authority, by an order of October 12, 1982, appointed the aforementioned Sri A. K. Mazumder, in place of Shri Subhas Chandra Banerjee and for that none have been prejudiced, specially when, the Enquiry Officer has given all reasonable opportunities to the employees, to defend their cases.

26. It was also the case of the said employer that the issue of the order of suspension on October 22, 1980 or the order dated November 18, 1980, was in terms of the Rule 8 of the

said Rules and the same was not void in the eye of law, as alleged. It has further been stated that the order of suspension and the consequent action taken thereon, was neither illegal nor void or unjust and by virtue of resolution No. 134 dated May 28, 1976 and 261 dated September 21, 1976, the Board of Trustees for the Port of Calcutta, duly delegated specific powers to the General Manager of the Haldia Dock Complex, which again, had the approval of the Central Government, under section 21 of the Major Port Trust Act, 1963. It has further been stated that at the time, material to this proceedings, the said employee was in the pay scale of Rs 425—645 and since his scale of pay did not exceed Rs. 1400, by virtue of the delegation of powers as aforesaid, the General Manager, was competent to issue the order of suspension, as he was the appointing authority, in respect of the said employee and for that, he automatically became the Disciplinary Authority. The said employer has further stated that the order dated November 4, 1980, revoking the order of suspension, specifically provided that the said employee would get Subsistence Allowance on the basis of his declaration to the effect that he was not employed anywhere, during his period of suspension, but the said employee has no such declaration and as such, was not entitled to subsistence allowance. The Charge Sheet as issued against the said employee, was claimed to be due, legal and valid, apart from being justified and it has been denied that the Disciplinary Proceedings, were held jointly, without any specific order from the concerned authority, in terms of the said Rules. It has further been denied that the Disciplinary proceeding being held jointly, was illegal, irregular or invalid as alleged or such proceeding was bad, for not following the principles of natural justice. It has been stated that the Deputy Chairman, in terms of his powers under Rule 11(3) of the said Rules, by Memorandum of September 8, 1981, appointed the Enquiry Officer, for enquiring into the charges brought against the said employee and Sri Mukul Sen and in exercise of his powers under Rule 13 of the said Rules, the Deputy Chairman, by his Memorandum dated September 8, 1981, further directed that the enquiry again, as mentioned above, be held jointly. It has further been denied that the charge of Enquiry Officer as mentioned, was made without any reason or such action was taken, to victimise the said employee, for his Trade Union activities, as alleged. Any violation of the terms of the agreement dated October 29, 1980, as alleged, has been denied, apart from denying that the action as taken, was for the purpose of victimising the said employee, for his Trade Union activities. It has been indicated that the order of suspension was issued on October 22, 1980 and the said order was withdrawn in terms of the order of November 4, 1980, which related to the involvement of the said employee, including other employees of the Port, on October 4, 1980. It has been stated that the order of suspension dated November 18, 1980, was issued after Sri Somesh Chandra Chakraborty, was released from Hospital and made a complaint in writing on November 15, 1980, to the Officer-in-Charge of the concerned Police Station and implicating thereby, that the said employee, assaulted him on October 28, 1980. The authority, to whom such complaint was also forwarded and the action which has been taken thereon, have been indicated earlier and such actions, according to the said employer, was not in violation of the agreement of October 29, 1980 or for denying natural justice, as alleged.

27. It has been stated that in course of enquiry, 8 witnesses were examined and in view of the statement on behalf of the said employer, the enquiry as stated on October 13, 1981, had ended on January 31, 1985. The said employer has said that it would appear from the minutes of the Enquiry Proceedings that all possible steps were taken by the Enquiry Officer, to complete the enquiry as expeditiously as possible but such expeditious disposal, could not be made, for reasons beyond control. The particulars whereof have been indicated in the proceedings itself and any intention to act mala fide or to victimise the said employee, has been denied by the said employer. It has been stated that on due and careful examination of the Departmental proceedings and the enquiry, it would appear that the conclusions as arrived at or the findings arrived at by the Enquiry Officer, were not void and they were in due agreement with each other and consequently, the punishment as proposed by the Enquiry Officer, was neither illegal nor improper or there was any denial of natural justice as alleged. The allegations of perversity in the proceeding, have also been denied. It has been stated that the enquiry as held, was fair and proper, where the said employee was afforded all due and reasonable opportu-

nities and he took care to have his case duly defended through a defence helper, who has deposed as WW-2 in this proceedings. It has been stated that it would further appear from the Report of the Enquiry Officer that on consideration of the matter duly and so also the records as available with him, the said employee was appropriately found guilty of the charges. It has further been reiterated that the Disciplinary Authority, after consideration of the matter in all perspective and on consideration of the findings of the Enquiry Officer and the records duly, awarded punishment on the said employee and there was thus, no illegality or any irregularity. It was the case of the said employer that the said employee met with the penalty of dismissal from services, in view of his gross misconduct to the effect of assaulting a senior Officer severely and which fact again, was proved in the departmental proceedings. The said employer has further stated that in inflicting the punishment in this case, there was no violation of the principles of natural justice. It has further been indicated that the guilt of the said employee, was duly found and proved before the Learned Judicial Magistrate, which finding again, was upheld by the Learned Appellate Court. It was also the case of the said employer that if such grave offence, as in this case, is found to be disproportionate now in respect of the action as taken, then it would be very difficult to maintain discipline in industry, in any manner whatsoever or to ensure work discipline. In fact, it was submitted that the said employee was not only guilty of gross dereliction of duty, but he was also guilty of gross insubordination, which is not expected, in maintaining office discipline.

28. There was a rejoinder filed by the said employee on May 30, 1991 and although the said rejoinder is a very lengthy one, but on a reference to the same it would appear that nothing very new or any new fact or circumstances, have really been incorporated or alleged, apart from what the said employee has stated in his initial written statement and as such, to avoid repetition and prolixity, I am not referring to those statements once again and in details.

29. Sri Sourindra Mohan Roy, who worked at the Haldia Dock Complex as Manager, Personnel and Industrial Relation, but had returned on September 1, 1987, has deposed as MW-1, he has stated that he remembered that during his tenure at Haldia, he came across the said employee, who was involved in the case of Criminal assault to an officer and he submitted a preliminary report, in that matter. It was his case that immediately after the incident, he filed an F.I.R. to the Police Station, in his official capacity and during his tenure at Haldia, a Domestic enquiry was initiated against the said employee and he was found guilty. He has stated that against such order, an Appeal was taken, which was also disposed of and finally, the said employee was also dismissed. He has produced Ext. M-1, the certified copy of the F.I.R. and he also proved the suspension order, as issued by the General Manager to the said employee and stated that the said order contained, the signature of Sri M. N. Sukla, whose signature he knew. The xerox copy of the order as issued by the General Manager, lifting the suspension order of the said employee, was marked as Ext. M-3, without any objection from the learned representative, appearing for the said employee, viz. Sri K. K. Roy Ganguly, who has unfortunately expired during the pendency of this case and more particularly, after completing his submissions. Similarly, Ext. M-4, the document dated January 29, 1980, was also produced by this witness and the same was not objected to by the representative on behalf of the said employee. The office copy of the suspension order, issued by the General Manager, was marked as Ext. M-5. The witness has stated that the first order of suspension was recalled, on the basis of a meeting, as held, between the said employer and the employees, in presence of the Hon'ble Ministers as indicated earlier and the second order of suspension, related to the incident of assault to an officer, for which F.I.R. was lodged, after the officer came back from Hospital and in the circumstances as indicated earlier.

30. This witness has said, according to his recollections, at the relevant time, power of appointing employees, whose basic pay was upto Rs. 1400 was delegated to the General Manager and he identified the Charge Sheet, as issued to the said

employee, which has been marked as Ext. M-6. He has said that the said document was issued under the signature of the General Manager. Regarding the delegation of powers to the General Manager, which was also sanctioned by the Central Government under the Major Port Trust Act, the witness produced Ext. M-7, a document dated November 19, 1991 and it was his evidence that the document dated March 10, 1981, Ext. M-8, was under his signature and thereby, he informed the said employee, who raised exceptions that the General Manager had no authority to take disciplinary action against him and he informed him that according to Ext. M-7, the General Manager had the authority to take disciplinary action. It was his case that on the F.I.R., as lodged, the proceeding against the said employee and another, was initiated and he has stated that Ext. M-9, was a certified copy of the order of the Appellate Court, by which the said employee's Appeal was dismissed. He stated that Ext. M-10, was the order dated September 8, 1981, and was issued by the Deputy Chairman, for holding Domestic Enquiry against the said employee. It is an admitted fact that the initial Enquiry Officer was transferred and the said employee felt that since, for long lapse of time, no further Enquiry Officer was appointed, he was suffering and on that, the Deputy Chairman was requested to send necessary instructions regarding transfer of the Enquiry Officer and on the basis of that letter, it was indicated that Shri Mazumder, will continue as Enquiry Officer and on September 9, 1983, he asked the Enquiry Officer to continue and complete the proceeding at an early date and such action was taken as would appear from a letter dated September 15, 1983, in the document's collectively marked as Ext. M-11. The order appointing Sri Mazumder, as the Enquiry Officer, in place of the erstwhile Enquiry Officer was produced and marked as Ext. M-12 and this witness has also produced the entire enquiry proceedings as Ext. M-13 and all records as referred to. According to this witness, Ext. M-16 was the order by the Deputy Chairman, asking the said employee to show cause, why he should not be dismissed and why Sri Mukul Sen, should not be censured. It would appear that by an order dated October 17, 1983, the said employee was asked finally, why he should not be dismissed from service and on that, the said employee gave his reply by Ext. M-17 This document will show that it contained the Notice of the Disciplinary Authority and it would further appear from Ext. M-19. It would appear that the said employee made representation against his punishment and in circumstances as mentioned earlier, by Ext. M-20, the appeal preferred by the said employee was rejected by the Central Government. On being asked, this witness stated that he saw the said employee in conciliation meetings and in other proceedings and he was also known to be a representative of the said Union. He has said further that at the time of assault he along with other officers, were holding a meeting at the General Manager's Bungalow, which was very near to the place of incident and after the incident, the officers rushed to the said Bungalow and reported the matter. He has further agreed that at that time, there was strike at Haldia Complex and attempts were being made, to solve the problem. He has further agreed that in the discussions with the said Union, the said employee was present and he was representing the said Union. He has also agreed that excepting as a prosecution witness, he had no direct knowledge about the incidents that had happened. It was his evidence that the said Rule or the Rules as mentioned earlier, were in force, since 1966 and Haldia Dock Complex came into existence after that and further delegation of powers were made thereafter, and such being the position, he felt that powers were duly delegated to the General Manager Haldia Dock Complex. He was not of course sure if delegation of powers were Gazetted. He agreed by Ext. M-8, he advised the said employee, regarding the authority of the General Manager and thereafter, the said employee attended the enquiry.

31. The said employee deposed as WW-1. He has said that after joining the services, he joined the said Union and initially, he was an ordinary member and thereafter he became a delegate and in 1980, he became a member of the Executive Committee. It was his evidence that in such capacity, he used to sit with the Management, in respect of various issues and negotiate on behalf of the employees of Haldia Dock Complex and for that, he was known

to all the officers of the concerned Complex. He has said that in October 1980, there was a dispute of employees at Haldia, over Transport facilities, as there was a reduction of such facilities and for that, the said Union, took up the cause and lodged a protest on October 4, 1980. He has alleged that although the said Union was assured by the said employer, to settle the dispute, but nothing was done after waiting for sometime, the said Union decided on October 14, 1980, that not only on that issue, but on other issues, they will lead a deputation. It was his evidence that when the deputationists left, they heard that one Dalip Kumar Bose was served with suspension order along with other persons and he was one amongst them. It was stated that on such, there was a commotion and the said Union, informed the authorities that unless the suspension orders were withdrawn, no work will be performed and in fact work was suspended after 4 P.M. He has said to have heard that on that, the F.I.R. as mentioned above, was lodged against the deputationists, on October 4, 1980.

32. He has stated that for such and sudden stoppage of work, the said Union also tried their best to persuade the employees to start their work, but they did not and on refusal of them to join their duties, the said Union informed their Calcutta Office, which is the Central Office and also met with local authorities of the said employer, for having the matter settled. He has stated that the said Union was informed by the Management that the matter will be settled, but nothing was done. It was also his case that on such representation by the Management, the Calcutta Office of the said Union, informed that they were negotiating the matter and they would be visiting Haldia. He has said that on October 27, 1980, the representatives of the Central Office came to Haldia and they informed that they had discussions with the Chairman of the Port Trust and they were expecting to have the matter settled in a meeting, apart from informing further, that work was going to be resumed on and from 22, 1980. It was his further evidence that on October 27, 1980, the Regional Authority of the said Union, met and requested the employees to resume work, as an Oil Tanker was to be unloaded. Witness has said to be present in the meeting, when the concerned discussions took place. It was his evidence that on October 28, 1980, he was at Ore and Coal berth and was standing near the gate at about 7.50 A.M., with many other employees and they had to wait outside the gate, because C.I.S.F. Personnel did not allow them to enter the premises. He has said to have waited for about 2 hours along with others, as every one was expecting the necessary intervention at any moment, on the basis of the assurance as indicated above. But, he has said that after leaving the gate, he came to the office of the said Union and while coming there, he tried to collect informations, as to why entries were not allowed and he learnt from the Joint Secretary of the said Union, Sri Hemlal Chatterjee, who, as stated, has deposed as WW-2 that when discussions were on, with the General Manager on October 27, 1980, the said Union was informed that some Officers were injured and that is why, the work could not be resumed. He has further stated, when even on October 28, 1980, the work could not be resumed, the said Union took initiative and their General Secretary, went to Calcutta and met the Chairman of the Port Trust. He has of course stated that in this meeting, he was not present.

33. It was his evidence that from his General Secretary, he learnt that work will be resumed from October 30, 1980 and in fact, on such presumption, he along with others joined the duties, but thereafter, he was again suspended on November 18, 1980 and he could gather that there was an F.I.R., filed in the concerned Police Station, on the basis whereof, a proceeding in Tamluk Court was initiated, where he was found guilty, but was released on the basis of Probation of good conduct. The certified copy of the judgment in that proceeding was marked as Ext. W-2 and it would appear that on the basis of Ext. W-3, he was acquitted and he was not allowed to join his duty even after Ext. W-3, he was kept under suspension. It was his case that after his suspension on November 18, 1980, a Charge Sheet was given to him at a very late stage, to which, he replied and thereafter, there was an enquiry. He has alleged that he was not informed regularly, the dates of the enquiry, but

he agreed that he was dismissed in 1986, after the enquiry was over. The witness had to agree that he participated in the enquiry, being assisted by a defence counsel and he had attended, practically on all the dates of hearing and he thought that he was given due opportunities in that enquiry, wherein proceedings were also recorded.

34. It was the further evidence of the witness, on October 27, 1980, a meeting was held in the Police Station. He had stated that he was not in the meeting, but was outside the Police Station and on October 27, 1980, he heard every thing and he also heard the fact of continuation of such meeting and in that meeting, it was indicated that proceedings had to be stopped, as some officers of the said employer, were injured. He was ofcourse not sure about the officers, who were so injured, but agreed that he had no direct knowledge about such injury and heard about such fact, when workers were waiting in the Bundh Road, where he also agreed, there was a scuffle, when some officers came and they were injured. He had ofcourse stated that there was outsiders in the scuffle also. It was his evidence that perhaps at the time of enquiry, he had produced some witnesses and in such enquiry, his evidence and those of others were recorded. The witness has further said that after enquiry, a second Show Cause was issued on October 17, 1985 and the date of Ext. W-2 was December 7, 1985. It was his further evidence that over his suspension, the said Union raised a dispute and the appropriate authorities informed the said Union, to accept the Departmental proceedings and if thereafter, nothing is done, then other remedies would be available and considering such, communication was made, perhaps in 1981. He agreed that initially, there was a dispute relating to his suspension and thereafter, a fresh dispute meaning thereby, the present one, was raised. He has said that after his dismissal in 1986, the said Union took no steps in the matter, but he individually took steps, as a result whereof, the present dispute was referred. He has agreed further that on October 24, 1980, there was a deputation, which received a patent hearing and he was present in such deputation. He also agreed that from Ext. W-2, an appeal was preferred, which was dismissed.

35. The next witness viz. WW-2 Hemlal Chatterjee, was the General Secretary of the said Union and in 1980, he was the Joint Secretary of the same. He has given a detailed view regarding the back ground, for which this dispute was raised. Since those facts have also been stated by WW-1, I think repetition of them would no longer be necessary. But, he agreed that at the point of deposing, he was not in position to give the particulars on the basis of which, the temporary facilities at Haldia as involved, were given. It was his case that he along with another Joint Secretary K. K. Roy Ganguly had discussions, first with the Chief Minister and Labour Minister and on their advise, a dialogue, the particulars whereof have been indicated by WW-1, was started and the agreement as mentioned earlier, was reached at Calcutta. Thereafter, he reached Haldia in the night of October 27, 1980 and contacted, reaching there, the General Manager of the said Haldia Dock Complex over phone and on mutual discussions, a meeting was arranged at the Port House on the morning of 28th October, where he along with some other officials of the said Union participated and discussed the issue and after such discussions, a draft Memorandum was almost made ready, but unfortunately, the same could not be signed, as some officers including the aforementioned Somesh Chandra Chakraborty came and reported that they were assaulted. As the Memorandum could not be executed, this witness contacted the then Hon'ble Labour Minister and met the Hon'ble Chief Minister, which meeting was also attended by the Chairman, on October 29, 1980. It was his case that thread bear discussions were held in such high level meeting and finally, a settlement was arrived, on the basis whereof, the work in fact was resumed on October 30, 1980. The settlement has been produced as Ext. M-4 and he was one of the signatories on behalf of the workmen and according to him, the Chairman signed the agreement on behalf of the Management.

36. It was his evidence that the said employee was placed under suspension on October 24, 1980 and at that time he was a member of the Working Committee of the said Union

at Haldia and the said employee was also allowed to resume his duty, in terms of the said Ext. M-4. The order of suspension of the said employee as issued by the General Manager, was marked as Ext. M-5 and Ext. M-6 showed that the Statement of Articles of Charges and the allegations, against the said employee, were communicated on February 2, 1981. He has further stated that on October 27, 1980, by Ext. W-3, he addressed a Memorandum to the Hon'ble Chief Minister, on the issue of victimisation of the Leaders of the said Union at Haldia and he also indicated, regarding the fact of attack on democratic Trade Union activities, on the basis whereof, the incidents as indicated took place. This representation has been marked as Ext. W-4. He has also agreed to have addressed Ext. M-5, to the General Manager of the concerned Dock Complex protesting against the action of the Management, evenafter signing the settlement and it was his further evidence that Sri Dilip Kumar Bose, the Secretary of the Haldia Branch of the said Union, by Ext. W-6, protested to the General Manager concerned, against the action taken against the said employee. It was his evidence that by letter dated February 16, 1981 Ext. W-7, an Industrial Dispute was sought to be raised, in respect of the action as taken against the said employee. He has also spoken of the order dated January 7, 1986, issued by the Deputy Chairman, to the said employee, whereby penalty of dismissal from service was imposed on him and he said that he knew, as such General Secretary, that the said employee was not paid Notice Pay or other settlement dues.

37. This witness has also agreed that the said Sri Dilip Kumar Bose was defence helper in the enquiry against the said employee and he was assisting Sri Mukul Sen in that enquiry, which enquiry again, was a joint one. He indicated that from Ext. M-13, it would appear that he appeared as defence counsel No. 1 and from such proceeding, it would appear that he asked the Enquiry Officer to direct P.W-2 before him, to produce certain documents which was ordered, but according to his recollections, those documents were not produced. It was his further evidence that he also asked the Enquiry Officer to direct P.W.8 before him, to produce certain documents, relating to Log Book in respect of movement of Transport on October 28, 1980 and to that, directions were given by the Enquiry Officer to the Presenting Officer, but according to his recollections, those documents were also not produced. He has further stated that from Ext. M-13, it would also appear that the records asked from the Enquiry Officer, to obtain the statements made by P.W.10 and although directions were given, but according to his recollections, those documents were not also produced. He further agreed that on the basis of noting in Ext. M-13, it would appear that he was allowed to defend by the Enquiry Officer, the cases of both the said employee and Sri Mukul Sen. He further stated that a letter dated October 23, 1981, was addressed to the Enquiry Officer, by the said employee, but that was not submitted to him, as the representation was not written by the said employee and he did not agree with the contents thereof, when explained.

38. The witness has stated that initially, the aforementioned Sri Chakraborty did not actually mention, the name of the said employee and there was some discrepancies and then he rectified the name of the said employee. It was the further evidence of this witness that on October 28, 1980, there was an understanding between the Management and the Workmen of Haldia, as transport facilities were going to be curtailed. He has said that on October 24, 1980, the said employer assured for review of their decision, but on the other hand, some false allegations were at the Police Station, against the activities of the said Union and as per his advise, the workers held a demonstration. His allegation that some officers were trying to attend the office by vehicle and Police stopped them and the workers, who were there, asked the officers to get down from the vehicle and to go to the office on foot. He has further alleged to have been ed Sri Chakraborty. However, he has said, there was discussions with the Management over the issue and after such discussions, he found that suspension order was served upon some of the Union activists and for that, the workers became informed that the said employee threatened the aforementioned-

agitated and spontaneously came out of the work. He has said to have been informed that some of the officers went to office on foot and he was not in a position to say, if any vehicle was allowed to enter, as he was not present there. It was his statement that no officer, ever complained to the said Union that vehicles were stopped after office hours. It was his evidence that on the basis of discussions, the suspension orders were to be withdrawn, so also the police case. He has further alleged that reasons shown for suspension of the employees were untrue. He has of course agreed that under the relevant Rules, in case of Disciplinary action, the said employer could suspend the employee concerned. He had to agree that from page 6 of Ext. M-13, it will appear that some documents as produced were withdrawn, as they could not be relied upon. His specific case was that Ext. M-22, was not produced, at the enquiry, although he has agreed that some documents were produced at the enquiry, but he was not certain about the said Ext. M-22, but he had to agree that contents of Ext. M-22 were explained to the said employee, but the production of that document could not be asked for, for the reasons as indicated earlier, and was not in a position to say, with which portion of Ext. M-22, the said employee did not agree, but he has said that the said employee informed him that he did not go to the Lock Gate area, he has further stated that on interrogation of the said employee, he has learnt that the other officials of the said Union, did not go to the Lock Gate.

39. He has further agreed that on the morning of October 28, 1980, when the said Sri Chakraborty came to the Port House, there were marks of injuries on him, but he was not sure about the portions of body, where the said Sri Chakraborty received injuries. It was his evidence that not only he met Sh. Chakraborty at Haldia Hospital, but he also met him in the house of his family members and similarly, he met the other injured persons and their family members. He has said, that on October 27, 1980, when the members of the said Union were in a meeting, they were attacked and those attackers also attacked the said Sri Chakraborty. He has further said that whatever statements he has made in the enquiry, they were made on behalf of the workmen concerned viz the said employee and the said Sri Sen.

40. According to the said Union, representing the said employee, Ext. M-2, whereby the said employee was placed under suspension, would show that the Criminal Proceeding as indicated earlier and since the same was pending, was the basis of the initiation of proceeding, and it was indicated that the whole case of the said employee would appear in a nut-shell, from his representation dated October 4, 1988, before the Labour Commissioner, marked as Ext. M-22. On the basis of the statements as indicated in that exhibit, it was contended that it cannot be said that this Reference was not maintainable, as claimed by the said employer. It was submitted on behalf of the said employee that after the incorporation of Section 2A of the said Act, an individual dispute can well and very easily be raised, even though the dispute as sought to be raised earlier by the Union, was not succeeded to. Such submissions were made, particularly when the said employee was said to have been victimised for his Trade Union activities and while inflicting such action, principles of natural justice were violated and the very basis or spirit of the judgement in Criminal proceeding was ignored. It has further been indicated that by the settlement of October, 28, 1980, the Chairman of the Calcutta Port Trust, him self had indicated that so far the action as taken, the law will take its own course. It has been contended that in fact, and in effect, such terms were violated and even the representation of the Probation Officer, was ignored and the said employee has been violated with severe punishment, which again, was quite disproportionate to the fault as alleged, against him. It was contended that the punishment as imposed on the said employee, was a motivated one and such being the position, the Reference under section 2A of the said Act, at the instance of the said employee, would be maintainable.

41. After placing the facts as contained in the Written Statement and rejoinder of the said employee, it was contended that steps if any, in the matter of suspension, were required to be taken under Rule 8 of the said Rules, by the Commissioners in a meeting in respect of employees, of all

classes and the Chairman or the Deputy Chairman, was authorised to take such action in respect of employees of all class or posts other than Class-I posts or the Head of a Department, in respect of employees of his department in all posts, the monthly maximum wages of which, exclusive of all allowance does not exceed Rs. 350, apart from indicating the other categories. It was pointed out that under Ext. M-5, which is an order dated November, 18, 1980, such power, suspending the said employee, was issued by the General Manager, who had no authority. On a reference to Ext. W-1, which was also under the signature of the Manager, Personnel and Industrial Relations Division, Haldia Dock Complex, it has been contended that the said Manager was not certainly above General Manager's hierarchy, so the said Ext. W-1 was not also authorisedly issued. Further reference was made to the order under section 28(7) of the Major Port Act and on a reference to Ext. M-7, which shows the delegation of powers, it has further pointed out, such delegation of power in the case of present nature, was also made in favour of the General Manager and as such, since Ext. W-1 was issued by the Manager and not the General Manager, so the action as taken, was improper. While on this point, reference was made to the cross-examination of MW-1, which showed that the concerned Rule came into existence in 1966, but so far Haldia is concerned, the effective date was after and delegation of power was made even thereafter. The witness has of course said, in view of such fact, he was of the view that powers to the General Manager, were duly delegated in this case, but he was not aware, whether the concerned delegation of powers were Gazetted. It was contended that the order imposing suspension is a quasi judicial one and as such, the same cannot be delegated.

42. To substantiate the above submissions, reference was first made to the case of Jati Nath Ganguly-Vs-State of Assam & Ors., AIR 1955 Assam 171. In that case, for the negligent act of a driver under the State Transport Service, a notice of suspension was served on him, by the Station Superintendent, State Transport and after enquiry, he was ultimately removed from service by the Secretary of the State Transport Department and it has been held that Article 311(2) of the Constitution of India seems to say that the notice should be from the competent authority and working in conjunction with the authority, who could remove the particular officer. It could be imagine that the Station Superintendent might have contacted the Secretary and a notice might have been issued in pursuance of his wishes. Unless statute says that such a notice is bad, the Court cannot assume that an official act was done in violation of the Official Rules and the Court will only assume that the notice was according to the wishes of the authority, who appointed the driver and it was a valid notice, in the absence of anything to the contrary on records. Then reference was made to the case of Balabant Rai Ratilal Patel-Vs-State of Maharashtra, AIR 1968 S.C. 800, which was a case under Bombay Civil Services Rules, which contained the power of interim suspension and suspension by way of penalty and a question arose, whether suspension during the pendency of enquiry for misconduct, was valid. In that case, by an order of the State Government, a Public Servant was suspended during enquiry, for his alleged misconduct and it has been observed that the authority entitled to appoint the public servant, is entitled to suspend him, pending a departmental enquiry into his conduct or pending a Criminal Proceeding, which may eventually result in a departmental enquiry against him. But, what amount should be paid to the public servant during such suspension, will depend under the provisions of statute or Statutory Rules in that connection. On the basis of that determination, it can be deduced that an employee may be suspended pending Departmental enquiry or pending Criminal Proceeding, which may be called interim suspension and the employer may also proceed to hold the Departmental enquiry and after the employee is found guilty, the order of suspension as a punishment, can be issued, if the Rules so permit, and that will be a case of suspension, as penalty. It has also been indicated that if an employee is suspended pending further orders, such suspension order does automatically

43. The Charge Sheet in this case has been marked as Ext. M-6 and that shows the four counts or heads, for which the said employee was charged and along with the said Charge Sheet, the statement of imputations against him, have also been indicated. The particulars of such imputations against him, have also been indicated. The particulars of would be available from the statement as recorded earlier. Rule 10 of the said Rules mentions about the Disciplinary Authorities and Rule 11(2) states that the disciplinary authority, shall frame definite charges on the basis of the allegations, on which enquiry is proposed to be held and such charges, together with the Statement of Allegations on which they are based, shall be communicated in writing to the employee, and he shall be required to submit by such time, as may be specified by the disciplinary authority viz. (a) to such authority or (b) where a Board of enquiry or enquiring officer concerned being appointed under Sub Rule 3 of Rule 11, to that Board or Officer, a written statement of his defence and also to state, whether he desires to be heard in person. By Ex. M-10, the Deputy Chairman concerned, had initially appointed Sri Subhas Chandra Banerjee, Manager, Finance Division, as Enquiry Officer, to enquire into the charges levelled against the said employee and Sri Mukul Sen and directed that the enquiry will be held jointly. Such holding of joint enquiry, may be directed under Rule 13 of the said Rules and in fact, in this case, such a joint enquiry was held. But, it was contended that when Rule 13(2) of the said Rules stipulate that any such order shall specify (i) the authority, which may function as Disciplinary Authority, for the purpose of such common proceeding, (ii) the penalties specified under Rule 9, which such departmental proceeding shall be competent to impose and (iii) whether the procedure may be followed in the proceeding, so the appointment of Enquiry Officer or holding of joint enquiry was void, as the terms as indicated above, were not duly complied with.

44. The enquiry proceeding in this case has been marked as Ext. M-13. It would appear that during the course of enquiry, the Enquiry Officer Subhas Banerjee, was changed and such change of the Enquiry Officer was claimed by the said employee to be void, illegal and irregular. He pointed out that the Enquiry Officer was appointed as aforesaid on September 8, 1981 and he initiated the enquiry on September 9, 1981, but it would appear from Ext. M-15 i.e. the report, the same was made on January 1986. Such delay, in completing the enquiry itself, was claimed to be fatal and to establish that, reference was made on the determinations in the case of Krishna Gopal Bhatwakar and Ors. Vs. State Bank of India at Bombay & Ors., 1961 (2) LLJ 653. The said determination has interpreted paragraphs 4 and 3 of the Sastri Award, relating to Bank Employees and power under Section 7(i)(b) and 7(i)(b-V), of the Industrial Dispute (Appellate Tribunal) Act. I find that such determination has really no application in the instant case. It was further contended that the enquiry in the instant case, was held in the absence of the said employee and to establish such fact, copious references were made to the enquiry proceeding, but I do not find any justification to agree with such submissions, not only on the basis of evidence as appearing from the enquiry proceeding, but also for the admissions, made by the said employee that he was duly represented in the proceeding and there was no derth of any reasonable opportunity, afforded to him. While on this point, reference was made to the evidence of WW-2. But, if such evidence is read and considered along with the report of the Enquiry Officer, it would appear that there was no justification in such submissions, as the said WW-2, has subscribed his signatures practically in all the proceedings. He of course claimed, not in a convincing manner, but in a half hearted way, that he appeared for the other employee Sri Mukul Sen, which fact was not absolutely correct.

45. It was indicated, that even in terms of section 20(8) of the Major Port Act, the authority which suspended the said employee, had no power, and for establishing that, reference was made to the case of State of Mysore & Anr. Vs. P. Narasimha Rao, AIR 1968 S.C. 349, which, in the fact of that case, has observed that classification of two grades of tracers, one for matriculate tracers with higher pay scale and another for non-matriculate tracers with lower pay scale, was not

violative of Articles 14 and 16. This case also, to my minds, will not of any help and assistance to the said employee or will apply in this case.

46. It was further contended that the findings as arrived at by the authority concerned were perverse and not germene, on the basis of evidence on record, apart from the fact, that the proceedings was vitiated, for non-compliance with the principles of natural justice. It has further been indicated that since copies of the proceedings were not given, the findings as made in the concerned proceedings, should not be locked into or considered and must be held to be void abinitio. For supplementing the above submissions, reference was made to the case of Deputy Inspector General of Police, Western Range, Coimbatore & Ors. Vs. Amalanathan, AIR 1966 Madras 203, which was a case, dealing with section 9 and 10 of the Madras District Police Act 1859 and Madras Police Standing Order No. 90(3)(b) and has indicated that the officer, writing the minutes, should be one, who was throughout in-charge of the preliminary Departmental Enquiry, but such Rule was held, not to be a statutory one, but administrative only and assuming the said Rule was statutory, under Article 309 of the Constitution of India, the same is directory and as such, non-compliance, would not mean and involve error of jurisdiction. In that case, there were enquiries into 16 charges against the Officer and he was found guilty of 14 charges. He was not supplied with the copies of the documents relating to one charge out of 16 and it has been indicated that even assuming that such document should have been summoned, to give an opportunity to the officer concerned, for his defence, it would have effected only one of the charges and could not be construed as a document, which has prejudiced the disposal of the rest of the charges. Apart from the above, it has been pointed out, that since the delinquent officer was allowed to peruse the statements of the witnesses made earlier, in investigation by the C.I.D. Inspector, the refusal to allow perusal again of those documents, at the subsequent stage, cannot be objected to. In that case, it has further been pointed out that change of personnel of the Enquiry Officer, due to transfer, would not entitle the delinquent of denovo enquiry, as of right, in absence of Rule and the delinquent officer, cannot insist that. The Enquiry Officer, having followed any particular order, for the examination of the witness cited by him, cannot be insisted that defence witnesses should not be examined before the cross-examination of the recalled prosecution witness. But, it has also been indicated that when Enquiry Officer himself examined the defence witness, in absence of the delinquent officer and without notice to him, the enquiry should be deemed to be opposed to natural justice. It was pointed out on behalf of the said employee that Rule 11 of the said Rules, which lays down the procedure for imposing major penalty, was not duly complied with and followed in this case, and as such, the proceeding was vitiated and thus, the same should be quashed and set aside. In fact, it was pointed out that the terms and contents of the said Rule 11, have not only been ignored, but they have not been followed and have, in fact, been violated.

47. Assault was one of the charges against the said employee and it has been indicated that a report was asked for, but the same was neither produced nor considered in its true perspective. There is no dispute that in this case, WW-2 was representing the said employee and the other employee Sri Mukul Sen and although, he asked for production of relevant documents, but they were not made available and as such also, it was claimed, there was violation of principles of natural justice.

48. It was pointed out on behalf of the said employee, by the said employee that the enquiry in this case was started on September 30, 1981 and the same continued with S. Banerjee, as Enquiry Officer till July 21, 1982 and thereafter, on September 8, 1981, on changing Sri Banerjee as Enquiry Officer, Sri A. K. Majumder was appointed and since no reason has been given, for such change or why the same was necessary, the enquiry should be deemed to have been vitiated. In support of such submissions, reference was made to the case of Goswami (S. P.) alias Sakti Prowad Goswami Vs. General Manager, South Eastern Railway & Anr., 1966 (1) LLJ 194, where, it has been indicated inter alia amongst others that the opportunity given to a delinquent employee must not be a matter of form, but a substance and he must be allowed opportunities to make his submissions and such is the necessity of following the rules of natural justice.

49. It was further submitted that the joint enquiry as was held in this case, has really prejudiced the said employee and as such, the findings therein were void and vitiated. There is no doubt that Rule 13 of the said Rules, postulates of holding of the joint enquiry and it was pointed out that sub-rule (2) therein, requires that such order shall specify firstly, the authority which may function as the Disciplinary Authority, for the purpose of such proceeding, secondly, the penalties specified in Rule 9, with such Disciplinary Authority, shall be competent to impose, and thirdly whether the procedure prescribed in Rule 11 or 12, may be followed in this proceedings. It was contended that since, on a reference to Ext. M-6, it would appear that the above formalities have not been duly complied with and followed, so, the enquiry was also bad. In support of such submissions, reference was made to the case of P. Nadasimbha Reddy Vs. State of Andhra Pradesh etc., 1975(1) SLR 315. This was a case of joint trial enquiry and has pointed out that objection as to such Trial, should be taken at the earliest i.e. before the Tribunal itself and joint trial of more than one charged officer would not be bad, unless prejudice is caused by virtue of such trial. In this case, no such exception was at all taken. It was further submitted that the enquiry in this case and that too, on the facts as disclosed, should be held to be not only mala fide, but an afterthought. To establish the above submissions, reference was made to Exts. M-2, M-4 viz. the settlement and so also to M-3 and it was further pointed out that the said employee was suspended because of Criminal proceedings and not for any Departmental proceedings. The role as played by the Enquiry Officer in this case, was scathingly criticised, as according to the said Union, representing the said employee, it would appear that the said employee was found guilty of charges as shown in Ext. M-6, which according to them, were vague. To bring home that in such a case, the enquiry cannot proceed, reference was made to the case of Khem Chand Vs. Union of India & Ors., 1951(1) LLJ 167 and then, to the case of Hazi Ahmed Hossain Vs. State, AIR 1960 Allahabad 623. The facts and circumstances of the cases, as would appear, would not apply here, as admittedly, it is very difficult to hold that the said employee was deprived of reasonable opportunities to have his case done or represented.

50. While on the findings on Ext. M-15, which were made under Rules 11(8) and (9) of the said Rules, indicated earlier, it was further claimed that they were perverse and against all principles of natural justice and that, in such a case, the findings cannot be sustained. While on this, reference was made to the case of workmen of Buckingham Carnatic Mills, Madras Vs. Buckingham Carnatic Mills, Madras 1970(1) LLJ 26, where, it has been pointed out inter alia amongst others that the fact that in the domestic enquiry, the management was not represented by any officer separately and that the questions to the worker and the witnesses were put by the Enquiry Officer, would not vitiate the domestic enquiry and in such circumstances, the enquiry officer cannot be said to have acted as the Prosecutor and the Judge. Here in this case, the Enquiry Officer evaluated the deposition of the witnesses and such evaluation, on a reference to paragraphs 101 to 103 of Ext. M-13, it was claimed on behalf of the said employee was improper, void, bad and mala fide. It was pointed out that it was an admitted fact that on October 4, 1980, there was a deputation and on October 27, 1980, there was a meeting over the incident, the particulars whereof have been indicated earlier. Such meeting, according to the said employee, was on a high level basis and the said employee, being admittedly a Trade Union Leader, actively participated therein and such was the cause or occasion, for the wrath of his employer. It has been pointed out that there has in fact been no evidence on causing any obstruction to any one and even if such obstruction was caused, that was a bona fide one and such fact, has not been duly considered. The fact of causing blockade, could not be denied, but it was sought to be sustained by saying that there was no evidence that such blockade was at the instance of CITU. It was also an admitted fact that Sri Mukul Sen, the other employee, was leading the concerned Bus, but when he has been practically exonerated of the charges, by inflicting lesser punishment, so, there was no cause or justification, for imposing such major

and harsh punishment, on the said employee, as in this case. It was further pointed out that in fact, there was no direct or positive evidence to show that the said employee was actually and effectively involved in causing any assault to Sri Chakraborty but only evidence was that the said employee was heard to be using abusive language, but the material witnesses, could not recognise him, inflicting the assault on Sri Chakraborty. On the basis of the above mentioned determination, it was also claimed, on a reference to the recorded proceedings that the Enquiry Officer, in this case, acted as a Judge and Prosecutor, which he should not have done. But on evidence, I do not find much justification in accepting such plea, the more so when, on the basis of the above determination, he could act as such, in an appropriate case.

51. It was contended by the said employee, on reference to the recorded evidence that evaluation of evidence in this case, was not properly and duly done. It was agreed that on October 27, 1980, there was a meeting at the road, as a result whereof, there was a spontaneous blockade, not at the instance of the CITU Union, and such blockade was resolved on the basis of high level meetings, as held at Calcutta. It was the submission that there were no evidence to the effect that the said employee was directly or actively involved in any of the occasions and strangely enough, such fact has neither been duly stated nor considered in the enquiry report. On a reference to the exhibits, at the enquiry and more particularly to Ext. M-15, it was indicated that the assessment of credibility of the witnesses, was not duly and properly done and there was no doubt or any dispute that the prosecution witnesses made biased depositions and that too, with the motive and intention of implicating the said employee and to make him suffer, for the reasons as indicated earlier and there was no latches on his part. As such, the findings were claimed to be not justified and that apart, it was claimed, the Enquiry Officer in this case, exhibited bias against the said employee in his report, which should not have been done and his report was also vitiated for non compliance with Rule 11(8) of the said Rules, which indicates the records to be included and used at the enquiry. To substantiate the submissions as above, reference was made firstly, to the case of workman of Buckingham Carnatic Mills, Madras Vs. Buckingham and Carnatic Mills, Madras (supra) and then, to the case of State of Uttar Pradesh & Ors. Vs. Baburam Upadhyay, AIR 1961 S.C. 751. That determination, by majority, has stated regarding the mandatory or directory character of Uttar Pradesh Police Regulations and more particularly of paragraph 486 and has observed that rule thereunder is mandatory. It was thus submitted that since the mandatory provisions of Rule 11(8) of the said Rules have not been duly followed and complied with, so, the report as made, should be discarded. It was further indicated that while making such report, the Enquiry Officer was required to base his findings on records and with due reasons, but should not have incorporated his knowledges. The said employee submitted that the enquiry in this case, also suffered from such defects and in support of such submissions, reference was firstly made to the case of Jima Ram Vs. State, AIR 1965 Rajasthan 32. That was a case on Criminal trial, where, a cluster of cases were decided and when the Medical witness stated that the death was caused on account of shock and haemorrhage on account of certain injuries only, then, it has been indicated that such statement could not be considered as equivalent to the statement that injuries by themselves, were in the ordinary course of nature, likely to cause death. In that case, it has further been indicated that appreciation of evidence, must be done duly and the personal views or observations of the Session Judge, against the accused, should not have weighed in the matter. Similarly, it was contended in this case that the enquiry proceeding as indicated, was vitiated for such use and exercise of personal views of the Enquiry Officer. Thereafter, and secondly, reference was made to the case of Pannalal Pathak & Ors. Vs. Elgen Mills Company Ltd., 1958 (1) LLJ 109 and then, to the Supreme Court decision in Anil Kumar Vs. Presiding Officer & Ors., 1986(1) LLJ 101 and thereafter, to the case of Assam Cash Karmachari Sangha Vs. Assam Company Ltd., 1956(1) LLJ 57 and lastly, to the case of Indian Heume Pipe Company Ltd. Vs. Rashtriya Indian Heume Pipe Mazdoor Sangh & Ors., 1957(2) LLJ 67. In that case, the management re-introduced card system for

marking attendance, some of the workmen refused to receive such cards and did not work on a common understanding and such action has been held to be a case of illegal strike. In Pannalal's case (supra), the employee concerned was dismissed for wilful disobedience of a lawful and reasonable order of a senior officer and on facts, it has been indicated the relief of compensation in lieu of reinstatement, in a case of strained relationship, would be reasonable. In the case of Anil Kumar (supra), it has been pointed out that an enquiry officer should give reasons for his conclusions and also why he preferred Management's evidence to that of the employee concerned and a termination order based on a report containing conclusions without reasons, will be unsustainable. The case of Assam Cash Karmachari Sangha (supra), was dealing with adjudication by Industrial Tribunals, on question of wages and Bonus and adjudication of such dispute, if amounts to trespass on the duties of the State to make laws for purposes mentioned in Articles 4 and 47. It was further claimed by the said employee that in this case, the defence stand/case was, when an Appeal lies on facts, it is the right and duty of the Appeal Court to consider, where its decision on the question of fact should be interfered, but in coming to its decision, it should bear in mind that it is looking at a printed record and has not the opportunity of seeing the witness and that it should likely reject the Trial Judge's conclusion that the evidence of a particular witness, should be believed or should not be believed, particularly when such conclusion is based on the observation of the demeanour of the witness, in Court. But, that would not mean that merely because an Appeal Court has not heard or seen the witness, it will, in no case, revise the findings of a Trial Judge, even on the question of credibility, if such question depends on a fair construction of the matters on record.

52. It was further reiterated on behalf of the said employee, since Ext. M-13, do not disclose that defence case was duly considered in terms of the Rules as indicated earlier, or there was in fact, no decision, which finds reference in Ext. M-16, so the decision was bad. To establish the above, reference was made to the case of the Union of India & Ors. Vs. K. Rajappa Menon, AIR 1970 S. C. 748, which was a decision on Rule 17(13) of the Railway Servants Conduct & Disciplinary Rules and has indicated that there is no obligation on the Disciplinary Authority to order like Judicial Tribunals, in respect of the findings, on charges and where such authority, after giving consideration to the records of the proceeding of the departmental enquiry, agreed with the findings of the Enquiry Officer, that all the charges mentioned in the Charge Sheet, had been established on merits and he was affirming the findings on each charges that will fulfil the requirements of the Rules and the Enquiry Officer's findings are not to be read in a pre-determined manner, but in a practical and reasonable way. Apart from the above, reference was also made to the case of Piyaar Mohammad Talukder Vs. Senior Superintendent of Post Offices & Ors., 1974(1) SLR 162 and also to the case of Radha Prosad Singh Vs. Gajadhar Singh & Ors., AIR 1960 S. C. 119, the particulars whereof have already been indicated earlier and thereafter, reference was made to the case of Ramchandrapa (T) Vs. State of Mysore, 1968 (2) LLJ 675. In this case, the Disciplinary Authority did not record its findings on the enquiry officer's report on each charge and such action, in the facts of the case, were held to have vitiated the enquiry.

53. The dismissal order was pointed out to be Ext. M-18 and that, according to the said employee, was contrary to the relevant Rules. It was further claimed and contended that punishment as imposed, was severe and the said employee submitted, that even if this Tribunal holds, on the basis of the evidence as produced, which it should not, that the said employee was guilty, so, under section 11A of the said Act, it should, in exercise of its powers, consider the case of punishment. In fact, it was submitted that since the punishment as imposed, was too harsh and severe, so the said employee, if necessary and if at all, can be awarded a lesser punishment. To establish the above submissions, reference was made firstly, to the case of Travancore Tea Estate Company Ltd. Vaudinier Vs. Their Workmen (Peermade Taluk Estate Labour Union), 1959 (2) LLJ 142 and then, to the case of Shri Sambhu Nath Goyal Vv. Bank of Baroda & Ors., 1983 (2) LLJ 415. In the first case as

above, the reasons and circumstances, when the decision of the management regarding the punishment can be inflicted, it have been indicated and the second case has pointed out, when an application for permission to adduce evidence, can be justifiably made, if the enquiry is found to be defective, by the Tribunal. The representative of the said employee could not deny the fact that Sri Hemlal Chatterjee, represented both the employees viz. the said employee and Sri Mukul Sen. But, it was sought to be pointed out and established, that it was really, the said Sri Chatterjee, had represented the said Sri Sen and not the said employee. This suggestion of course, appeared to be, on consideration of the recorded evidence, not justified, as the signature of said Sri Chatterjee, as stated earlier, are there in many pages of the proceeding and he has not specifically mentioned that he was appearing only for the said Sri Mukul Sen. In fact, on the basis of the records of the proceedings, it appeared that the said Sri Chatterjee, appeared for both the employees, viz. the said Sri Mukul Sen and the said employee.

54. Mr. Chowdhury, appearing for the said employer stated that there is no doubt that in 1980, the Officers at Haldia, were assaulted and before holding the said employee guilty, an enquiry was held, where due opportunities were given to him and thereafter, the penalty as indicated earlier, was imposed. It was submitted by him also, that in coming to such findings, the Criminal case as was initiated against the said employee and for which, he was ordered to be placed under Probationer of Offenders Act, which itself was a punishment, was considered. He pointed out further that the said Rules were amended in 1980 and due delegation under the same was made. The Rules according to him were framed under the Major Port Act and he further indicated that in terms of Rule 10 of the said Rules, the Charge Sheet in this case, was duly issued by the General Manager. Mr. Chowdhury also mentioned section 2(c)(d) and Sections 28 and 21 of the Major Port Act, in support of the submissions as above and also to those as indicated hereinafter. It was mentioned by him, on a reference to Ext. M-7 that the proceedings as in this case, were duly initiated and under the provisions of the said Rules, the General Manager could act under section 21 as above. It was further pointed out by him that under the said section, the acts and actions, as taken, were and are not required to be gazetted, so also the delegation of powers, more particularly when, such delegation in this case, was made under a Statutory Act viz. Major Port Trust Act. So, according to him, the action as taken, was due and the cases as cited by his adversary, were and are not applicable.

55. Mr. Chowdhury made copious reference to Ext. M-13 and submitted that the action of the Enquiry Officer in this case, was not biased or mala fide as alleged, but the same, even on a reference to the evidence of WW-1, will appear to be bonafide and on due sanction. He pointed out further that there is no dispute or doubt that the said employee, who deposed as WW-1, received all assistance, appeared in the proceedings and availed of the due and necessary opportunities, as were duly afforded to him. It was further pointed out by him, on a reference to question 2904 of the said proceedings that the same will show and prove without any doubt, that Hemlal Chatterjee was representing the said employee, as his defence counsel. While on the subject, he referred to the case of M. Kalindi & Ors., Vs. Messrs Tata Locomotive & Engineering Co. Ltd., Jamshedpur, AIR 1960 S. C. 914. That was a case, where enquiry into misconduct was initiated by the Management and on facts, the Supreme Court has observed that the workman was not entitled to be represented by the representative of the Union and in the case of such happening, principles of natural justice would not be violated. As such, Mr. Chowdhury submitted that even if Hemlal Chatterjee was not representing the said employee, which was not a fact, to which I agree, the said employee cannot contend that he had not had the due and reasonable opportunities to have his case defended. From the evidence and records, it is difficult to agree that the said Chatterjee did not represent the said employee or he only represented the case of Sri Mukul Sen. He submitted further that the Enquiry Officer in this case, as would appear from Ext. M-10, was appointed under Rule 13 of the said Rules, for holding the joint enquiry in terms of sub-rules (3) and (5) of Rule 11 of the said Rules and in terms of Rule 13(2), and the impugned order has duly conformed on

him, the necessary powers of the said Rule 13(2). Mr. Chowdhury, further pointed out that neither sub rule (11) nor sub-rule (12) of Rule 11 of the said Rules mentions the Disciplinary Authority and the effect of such, according to him, is that designation was required to be mentioned, which have not been done and such submission was made by him, on a reference to Section 16 of the General Clauses Act, which mentions that the power to appoint includes power to suspend or dismiss. For establishing the above, Mr. Chowdhury, firstly, referred to the case of L. Hazarimal Kuthala Vs. Income Tax Officer Special Circle, Ambala Cantt. & Anr., AIR 1961 S.C. 200, which, while dealing with Section 5(5) of Patiala Income Tax Act, has observed that the exercise of power will be referable to jurisdiction, which confers validity upon the authority and to have jurisdiction. That case has also indicated that a case which was not pending at the time of transfer, could not be transferred under Sub-section 7(A) of Section 5 and power to transfer in such case, before they came into being, must, therefore, be found in other enactment. That case, has further pointed out that if a particular action is valid under one section, it cannot be rendered invalid, the action or the identical action, can also be taken under another section and it makes no difference, if the two empowering provisions are in the same statute. Then, a reference was made to the case of B. L. Kolhi Vs. Union of India & Ors., 1974 (2) SLR 679 and also to the case of Radhashyam Basak Vs. Santosh Kumar Basak & Anr., AIR 1971 Calcutta 17, where it has been pointed out that while the petitioner in a petition under section 115 of the Code of Civil Procedure did not challenge any question of fact and the only challenge was, with regard to jurisdiction of the Lower Court, the petition, though it was not supported by an affidavit was maintainable. In Kolhi's case (supra), it has been pointed out amongst others, if the petitioner was not given the copies of documents, but inspection of them, then there was no denial of reasonable opportunities.

56. In answer to the submissions by the said employee, which were made on a reference to the Charge Sheet, Ext. M-6 and annexures 1 and 2 therein, to be vague and not maintainable, Mr. Chowdhury indicated that such submissions will have no legs to stand upon, as specific dates of incidents have been mentioned and the charge sheet was not vague or lacking in material particulars of the charges. He said that even then, the test would be, if the determination has really suffered. He indicated that the answer cannot be in favour of the submissions of the said employee and that too, on a reference to the observations in the case of Chittaranjan Das Vs. State of West Bengal, AIR 1963 S.C. 1696. In that case, an appeal was taken to the High Court, against the proceeding under section 421 of the Code of Criminal Procedure, 1898 and where the question arose, as to whether the High Court had the power to dismiss the appeal summarily? On further Appeal, the Supreme Court has observed that leave should not be granted, on the ground that appeal should not have been dismissed summarily. As such, Mr. Chowdhury pointed out that here in this case, there was some reasons given, to which there was no doubt and so, on that ground, the said employee or his case cannot succeed. He then referred to the determinations in the case of S. N. Srinivasan Vs. The Director General, E.S.I.C. & Ors., 1988 (7) SLR 526 and more particularly to paragraph 54 therein and pointed out, that such determination would not be available and applicable in this case, as the Charge Sheet, as indicated, was not vague and the said employee took elaborate steps to refute them and to have his case duly represented. In fact, it was pointed out by him, on a reference to pages 19 and 68 of the report that Prosecution Witness No. 1 was actually cross-examined at length and he effectively cross examined the witness and the charges, were not at all vague and indefinite.

57. A point was sought to be urged on behalf of the said employee that enquiry in this case, was held without duly notifying or serving the notices of the adjourned or changed dates. Mr. Chowdhury submitted that there was no substance in such submission, as it would appear from pages 149 to 152 that Mr. Hemlal Chatterjee was present and it would further appear from page 167 that one D. K. Bose, was also present. In fact, it was submitted that the dates as subsequently changed, were duly fixed in the pro-

sence of the above persons and with their knowledge and notice to them and also in their presence. The fact that the above mentioned persons were present at the enquiry on occasions more than one, could not be disputed on behalf of the said employee.

58. As indicated earlier, it was pointed out by and on behalf of the said employee that change of the Enquiry Officer, which was done in this case, was irregular and improper and in answer thereto, Mr. Chowdhury referred to Exts. M-11 and M-13. The said Ext. M-11, which was dated August 4, 1982, showed that the change was done, due to the transfer of the original Enquiry Officer and such fact, would also appear from page 125 paragraph 12/2 of the Ext. M-15. In fact, it was pointed out that Sri Mazumdar completed the examination of Prosecution witnesses before his transfer and to establish that, reference was made to Pages 196, 197 and more particularly, to question 2036 of Ext. M-13, which has pointed out and showed the circumstances, how and why, such change of Enquiry Officer, was effected. It was indicated that thus, the question would be, if thereafter, Sri Mazumdar could continue with the enquiry. To establish that he could, reference was made to the case of Bholanath, Ex. Conductor Vs. Management of Delhi Transport Undertaking, 1971 SLR 240 and particular reference was made to paragraph 2 of that case. The question in issue in that case were, (1) if the power to issue charge sheet can be delegated and (2) the validity of the findings, given by the Enquiry Officer, when the enquiry to some extent was held by another officer and it has been observed that there was no violation of Statutory Rules and the Disciplinary enquiry against the delinquent, did not contravene the concerned Rules. Thereafter, reference was made to the observations in the case of Lalaram Vs. Hariram, AIR 1970 S.C. 1095 and particular reference was made to paragraph 7 of that report, which has observed that there is no basis and justification for the contention that where section 417(4) of the Code of Criminal Procedure 1898, provides a prohibition and it bars the jurisdiction of the High Court to deal with the application, what will be the effect, if a period of 6 days has expired from the date of the order of acquittal. It was further indicated by Mr. Chowdhury that, even in the case of such change of Enquiry Officer, denovo enquiry was not necessary. In that case, during the course of enquiry against the delinquent Officer, there was a change of personnel of the Enquiry Officer, due to transfer as in this case, and the Full Bench decision of the Madras High Court has indicated that the delinquent officer, would not be entitled to de novo trial as of right, in absence of Rules. Here also, Mr. Chowdhury duly pointed out that since there is no such Rule in that regard, so, denovo enquiry could not be asked for. Mr. Chowdhury further pointed out that the evidence in this case, was duly recorded by the Enquiry Officer before his transfer and as such, on the basis of the Orissa High Court Judgment in the case of Barubandhu M'sra Vs. Inspector General of Police & Ors., AIR 1970 Oris a 213, such denovo enquiry could not also be asked for. Such submissions of Mr. Chowdhury, were of substance. The said determination has also indicated that in the absence of Rules, the successor Enquiry Officer, can submit his report, on evidence recorded by his predecessor and in such a case, there was no violation of principles of natural justice. He thus claimed, therefore the charge of Enquiry Officer as claimed, has not really prejudiced the enquiry. This submission of Mr. Chowdhury also appeared to be of substance. Mr. Chowdhury also referred to the determinations in the case of Deputy Inspector General of Police, Western Range, Coimbatore and Ors. Vs. P. Amalanathan, AIR 1968 Madras 203, the findings whereof have been indicated hereafter.

59. While on the non supply of the documents and on the allegations as made on that behalf, Mr. Chowdhury referred to Ext. M-13 and to page 101 and paragraphs 949 to 961, apart from relying on the evidence of Prosecution witness Nos. 2, 3, 6 and 10. While on prosecution witnesses, he referred to page 121 of Ext. M-13 and more particularly, to paragraphs 1236 and 1239 and submitted that the contents of paragraph 1239 were not relied upon. While on prosecution witnesses, he also referred to page 165 and more particularly to paragraphs 1788 and 1794 and while on P.W. 10, he referred to pages 181, 182, 183 and 283 and more particularly, to paragraphs 1966 and 2905 and claimed that if

the entire thing is looked into and considered in its entirety, there will be no difficulty in holding that there was no prejudice and any difficulty caused to the said employee. He denied the submissions that medical papers in this case, were not produced and such submissions were sought to be established by him, on a reference to Ext. M-14, which according to him, contained all the documents. Thus, it was claimed and contended by Mr. Chowdhury that really, there was no actual non supply of documents or records as alleged and even if there was any such shortfall, that as stated, has not caused any real prejudice to the said employee. On the materials as available and the evidence on record, I feel that actually, no real prejudice has been caused to the said employee, either in realising the charges or the impact of them and to have his case duly defended or prosecuted on the basis of those charges.

60. While on the question of non-supply of documents as alleged, Mr. Chowdhury, appearing on behalf of the said employer, placed the evidence of WW-2 and more particularly, to the admission as made by him. The said WW-2, Hemlal Chatterjee stated at pages 122, 165 and 187 of Ext. M-13, there were reference of the documents as involved, but he has said that he was not in a position to say, whether the management relied on those documents or not? This witness has further pointed out that the said employee preferred an Appeal against the order of dismissal and at the Appellate stage also, the Union officials looked to the case. The witness has of course claimed that the Appellate Authority was vindictive. To establish, that documents were not withheld, reference was made by Mr. Chowdhury, to Ext. M-13 and particularly to page 283 and more particularly to paragraph 2905 therein. It was further pointed out by him that the Medical report, as would appear from Ext. M-6, was referred to and that according to him, would appear from page 128 of Ext. M-13 and more particularly, from paragraph 1295 therein. Therefore, it was claimed by him that there was no basis for the claim or grievance of non supply of the documents and in fact, he pointed out that in his reply, Ext. M-17, the said employee has made no reference to such non supply of documents as claimed and in his Appeal, Ext. M-19, the said employee has not also made any such case of any denial of opportunities. It was pointed out by Mr. Chowdhury that inspection of the documents were given and really taken by the said employee and as such, there was also, no cause for any grievance, on such non supply of documents and to establish this, he referred to the evidence of P.W.5 and more particularly, to page 128 of Ext. M-13. He further pointed out, on a reference to the record that they will explicitly show, from questions 1313 to 1314 at page 130 of the said exhibit that documents were really received by the said employee.

61. While on the effect, if at all, of such non supply, reference was made by Mr. Chowdhury to the case of S. R. Srinivasan Vs. Director General, E.S.I.C. and Ors., 1988(7) SLR 528 and also to the case of B. L. Kohli Vs. Union of India (supra). He further pointed out, on a reference to pages 101, 961 and 962 and so also page 100 that the documents other than those as indicated, were also duly made known/supplied to the said employee. Mr. Chowdhury pointed out that the charge sheet in the instant case, was not assailing P.W.1 and not P.W.3 and such facts would appear from paragraph 889 of the said Exhibit. He of course claimed that even if, there was no supply of such documents, the said fact was negligible and even on the basis of other relevant evidence, the verdict of guilt against the said employee, could be established and for this, he referred to pages 121 and 122 of Ext. M-13 and more particularly, to pages 1236 and 1239. Mr. Chowdhury pointed out that the Bus in question was driven by one S.R. Biswas, but his evidence was not really and in fact, relied upon by the Enquiry Officer and as such, the non production of the said evidence or the connected records relating thereto, would not be material and fatal. It is true that, if no reliance was placed at the enquiry to any inference in coming to his decision by the Enquiry Officer, such evidence is not required to be produced and supplied to the delinquent employee.

62. It was pointed out by Mr. Chowdhury that the said employee had really asked for 4 documents and it would appear from page 101 paragraph 961 of Ext. M-13, that there is no evidence, if those documents were produced and from Paragraph 952 at page 100 of the said Exhibit, the ailments

or the nature thereof, would appear and he further pointed out, on a reference to pages 81 to 84 and 88 to 103 that thorough cross examination on such fact was done by and on behalf of the said employee. If such and thorough cross examination has been done then, there remains no cause for any grievance on that account. On a reference to paragraph 522 at page 69 and paragraph 530 at page 70 of the Exhibit, Mr. Chowdhury stated that the incident on October 28, 1980, was duly and satisfactorily established and proved. He further pointed out that the said Sri Biswas, the driver, as P.W.2 has also pointed out such happenings. He also referred to the evidence of P.Ws. 1, 2, 3, 7, 9, 10 and D.W.1, with corresponding reference to page 4 of the said Ext. M-13 and further pointed out that identification, on a reference to those evidence and other evidence at paragraphs 2250, 2306, 2314 at pages 212 to 220, would be available and apparent. Such being the position, it was further indicated by him that there was no prejudice in the instant case and there has been no evidence of any paucity or denial of opportunities. To establish that in such a case, there was or could not be any denial of opportunity, he referred to the case of Chandrama Tewari Vs. Union of India, AIR 1988 S.C. 117, in which case, a copy of the report submitted by the Police in the Criminal case, relating to alleged theft by the delinquent, was not supplied to him and that document was not relied upon by the Enquiry Officer and on such facts, it has been held that the documents not being relevant or material, non supply of the copies, did not amount to violation of principles of natural justice and no prejudice was caused to the delinquent in cross-examining the concerned Police Officer. It was further indicated by Mr. Chowdhury and that too, on a reference to paragraph 2905 at page 283 of Ext. M-13 that the Medical report in question, which was Ext. M-4, was really included in Ext. M-6 and for that, there was no doubt or dispute that the said employee was not really handicapped or suffered any prejudice. In any event, it was claimed by Mr. Chowdhury that the said employee, really got necessary opportunities to demolish the Medical report, but he failed to take any advantage of the same, and as such, he cannot be heard to say that no opportunity was really received by him. To establish this, reference was made by him to the case of S. R. Srinivasan Vs. Director General, E.S.I.C. and Ors. (Supra) and further to the case of B. L. Kohli Vs. Union of India (supra) and claimed that in this case, the said employee, duly received all and every opportunities. After placing page 128 of Ext. M-13, he also said that there was reference to the related documents and that according to him, would show and establish that the said employee, had not in any event, suffered and there could not be any or real grievance for any dearth of reasonable opportunities to the said employee, on that count. To establish, that there was no paucity of such opportunity, Mr. Chowdhury referred to the evidence of WW-1 and more particularly, to the portion, where the said witness has agreed to have participated in the enquiry, which was held against him and in such enquiry, he was assisted by his defence counsel. He made further reference to the evidence that the witness agreed to have attended, practically on all the dates of enquiry and he also thought that he was given due opportunities in the enquiry, which again, were also recorded. Mr. Chowdhury, then pointed out that Ext. M-15, was supplied to the said employee, with the second show cause notice and Ext. M-16, which has now been referred to in Ext. M-17, shows that the said employee had the copies of such records. According to Mr. Chowdhury, this will appear from page 6 of Ext. M-17. He pointed out that the enquiry report was marked as Ext. M-16 and that according to him, duly complied with Rules 11(8) and (9) of the said Rules. It was his case that pages 20 to 21 of M-16 were really the analysis of the case, while giving observations and that could be done and for that, there could be no denial of natural justice. While on the point, he has also indicated that the question of grant of following up the principles of natural justice, would not be opposed, if such opportunity or the grant was made in a particular manner which created no difficulty, end to establish the same did not, he indicated that the non supply of copies as alleged, would not be tenable in the facts of this case. He also indicated that the basis of the determination in Maharashtra State Board of Secondary and Higher Secondary Education Vs. K. S. Gandhi and Ors., 1992 (2) S.C.C. 716 and more particularly on a reference to paragraphs 20 and 21 of that report to the effect that necessary justice requires, recording of reasons holding of domestic enquiry

and report made therein and there was no cause of any denial of natural justice in this case, and where facts are not in dispute, non recording of reasons, in support of the conclusion as arrived at in the report, as in this case, would not be violative of principles of natural justice and such principles can be excluded on the particular facts and circumstances of a given case of the present nature. In this case, Mr. Chowdhury submitted, there was really no violation on the above or on any head.

63. It was then pointed out by Mr. Chowdhury that other allegations, as would be appearing from the Enquiry Report, Ex. M-15 and more particularly, on a reference to page 20 therein, are regarding the use of "Red flag" and that according to him, on the evidence as recorded, would be established, to be belonging to CITU. The said fact was sought to be established by him, on a reference to page 137 of Ext. M-13 and also paragraphs 1104 and 1112 at page 112 of the said Exhibit and according to him, the involvement of CITU in this case, would be apparent from page 200 paragraph 2118 and that was also the evidence of DW-2 Mr. Chowdhury of course pointed out very fairly that such involvement was actually, on the basis of implications. He also pointed out that involvement of CITU, would also be apparent from page 264 and paragraph 2804 of the report. The involvement of CITU or not, would not really be very material in this case.

64. On a reference to page 20 of Ext. M-15, Mr. Chowdhury indicated that the General Manager in this case, duly used and exercised his discretion and Ext. M-15 and more particularly, the evidence of PW-9 at page 167 and paragraph 1811, would show about such use and exercise of discretion. It was then pointed out by him that the said Union, in this case, did not duly co-operate, inspite of their assurances.

65. On a further reference to Ext. M-13 and more particularly to page 12 paragraph 50, Mr. Chowdhury indicated that the blockade as alleged in this case, was real and in fact, the same happened. He wanted to establish such stand, on reference to page 53 paragraph 357, page 70 paragraph 530, page 112 paragraphs 1105, 1107, 1113, page 77 paragraph 589, page 143 paragraph 1439, page 182 paragraph 1928, page 169 paragraph 1817 and page 182 paragraph 1868 and pointed out that in the facts and circumstances of the case and the evidence as available from the above, amongst others, the Enquiry Officer was right in making his findings at page 21(V) of his report, Ext. M-15. He also pointed out that although there was instruction of the said Union to open the Lock gate, on the basis of discussions held, but, in fact, the said lock-gate could not be opened and operated, because of the road blockade and the barricades created and such fact, according to him, would be available and established from page 12 of paragraph 50 of the report and the evidence of PW-10. He further pointed out that from page 53 of Ext. M-13, it would be apparent that picketing was there and recording on the question, would thus be, if because of such picketing, any obstruction was caused. According to Mr. Chowdhury, on the basis of ordinary Dictionary meaning of the word, such picketing, would also mean and include obstruction. He further pointed out from paragraph V of page 21 of Ext. M-15, the reasons why the defence was not accepted or the same was considered to be false and that according to him, will appear from Ext. M-13 and more particularly from paragraphs 1063, 1064, which would establish the fact of barricade. He further pointed out, the location of the Union Office in this case would be of material consideration and that the office of the said Union was in the vicinity, would appear from paragraph 2540 at page 240 and also from paragraph 2142 at page 202 of Ext. M-13. The above evidence, according to Mr. Chowdhury, would show that the Union Office was at the Township and paragraph 1 of Ext. M-13, would also establish that the Bus, which was in use, belonged to CITU.

66. It was one of the contentions of the said employee that the Enquiry Officer imported his personal knowledge, while finding the said employee guilty of the charges. Mr. Chowdhury while replying on the point, referred to the observations made in the case of *Kumbha Lingum (S) & Ors. Vs. Indian Metal and Metrological Corporation Madura & Ors.*, 1964 (1) LLJ 81, which was a case on domestic en-

quiry and has indicated about the principles of natural justice to be followed or the scope thereof, under Section 33(2)(b) of the said Act. The Enquiry Officer in that case, imported his personal knowledge into the enquiry, in coming to his inference that the concerned workman had resorted to stay in strike. The necessary application for approval of the employer was dismissed by the concerned Tribunal, on the ground that the said officer could not import his personal knowledge into the domestic enquiry. On a Writ Petition being taken by the Management, to quash that order, the same was allowed on the ground that the employer was not disqualified for holding the enquiry in all cases, because he had personal knowledge of the charges or the facts relating thereto. The concerned Tribunal also directed to re-consider the question, afresh. Against the order made in the Writ proceeding, an Appeal was taken by the workman concerned and such proceeding was dismissed with directions that the Industrial Tribunal, on re-hearing the matter, shall consider the merits of dismissal and come to its own conclusion on the evidence on record and the evidence to be adduced before it. Then, a further reference was made by Mr. Chowdhury to the observations of the Supreme Court in the case of *Tata Engineering & Locomotive Co. Ltd. Vs. S. C. Prasad & Anr.* 1969 (3) S.C.C. 372. In that case, the applicant Company, after having made domestic enquiry, dismissed several workmen and removed names of two persons from the rolls on the ground, that they have abandoned their employment. The Company also discharged one workman from the service, on the ground that due to his certain activities, the Management had lost confidence in him and his continuance in service was prejudicial to the Company's interest. On a reference, the matter was placed for adjudication before the concerned Industrial Tribunal, on the question as referred to in the report and the Tribunal, after giving an elaborate Award, held, that the enquiries were not properly held and were vitiated and the vices of discharge and dismissal were malafide and were, the results of victimisation, as consequence thereof, the Company's order (excepting one, in which they directed the payment of wages from the date of discharge upto the date of Award) was bad and directed re-instatement. Against such Award, the Company went to the Hon'ble Supreme Court of India and it has been observed amongst others, that the exercise of the powers by the Appellate Company under Standing Order 1947, in preference to disciplinary action, cannot render the order of discharge malafide or one passed in colourable exercise, to discharge a workman from service, if such power was properly exercised. Mr. Chowdhury, on a further reference to the observations in paragraphs 11, 12 and 13 of the report, pointed out that here in this case, only incidental matters were referred to and as such and more particularly when, they were not looked into or considered in the findings, they cannot and should not be interfered with. It was further pointed out on behalf of the said employee that the Enquiry Officer, has not duly considered the defence argument. Such submissions were categorically denied by the said employer and it has been pointed out that the said employee, as would appear from the evidence of P.W-1 at page 13 paragraph 50, Ext. M-13, would show and establish that Medical report was duly made available to the said employee and such fact, according to Mr. Chowdhury, would also appear from paragraphs 2030, 2035, 2042, 2045-46 and 2048 at page 190 of the said Ext. M-13. It has also been pointed out that there was also eye witness to the occurrence, as would appear from paragraphs 74 and 76 at page 17 of that Exhibit and the victim P.W-1, has also testified to the incident of assault at paragraph 130 page 22 of the said Exhibit, amongst other paragraphs. It was also pointed out by him that such evidence was also duly corroborated by P.Ws. 2, 3 and 7 and as such, on a reference to a Division Bench Judgement in the case of *Wimco Sramik Union Vs. Seventh Industrial Tribunal & Ors.*, 91 CWN 672. It must be held that considerations relevant to the matter, were duly followed and taken note of. Specific reference was made by Mr. Chowdhury to paragraph 17 of the report. In that case, it has been indicated amongst others, while on the question of misconduct or the necessary attribute thereof that it is enough if it is of such a nature as to affect the suitability of a particular employee for a particular employment and such test, can be reasonably applied, to find out, if he can be retained in that employment. It has also been indicated that the terms and language of section 11A of the said Act clearly indicate that the authorities mentioned therein only assume

jurisdiction when the order of dismissal or discharge is passed as a measure of disciplinary action. The said section would not come into operation in respect of cases of termination of service under contract, i.e. discharge simpliciter or retrenchment would not be punishment, apart from indicating that if such an employee, who was found guilty of such misconduct, as involved in this case viz. stealing, is allowed to proceed with or such admitted finding of the guilty conduct is allowed to be exonerated by a lesser punishment of removal under section 11A of the said Act, it would be very difficult for the employer to maintain discipline in the organisation. On the basis of such observations, Mr. Chowdhury claimed that no lesser punishment than ordered, should be passed.

67. Mr. Chowdhury, on a reference to the evidence of P.W.-9 at page 170 and more particularly, to paragraph 1817 and paragraph 1920 at page 177 of the said Ext. M-13, which again, according to him, was corroborated by P.W.10, as would appear from paragraph 1973 at page 184 of the said Ext. M-13, claimed that no interference should be made. He also pointed out that the evidence of P.Ws. 1, 2, 3, 7 and 9, would clinch the issue regarding the eye witnesses to the occurrence and the identifications as were made, in respect of the said employee. It was further pointed out by him that from page 12(d) of Ext. M-13, it would appear that there were willing workers and the said employee was found at the place of occurrence, obstructing them to work or join their duties. The capability and veracity of the witnesses to the occurrence and the bona-fide of their statements, according to Mr. Chowdhury, would appear from page 115 paragraphs 1157 and 1158 of Ext. M-13. He also submitted that in this case, although alleged, there was really no establishment of any personal grudge, for which the said employee was claimed to have been implicated and punished.

68. While on the question of victimisation as alleged, Mr. Chowdhury denied such charges or any happenings on that account and placed reliance on the case of *Messrs. Bharat Iron Works Vs. Bhagubhai Valabhai Patel & Ors.*, AIR 1976 S.C. 98, a case under section 33 of the said Act and where, the power of the Tribunal to interfere with the order of dismissal, as passed in the domestic enquiry, has been indicated, apart from indicating, what is the meaning and scope of the word "victimisation" and the necessary pleading and proof, required to establish the same. It has been pointed out that ordinarily, a person is being victimised, if he is made to be a victim or a scape goat and is subjected to persecution, prosecution or punishment, for no real fault of his own, in the manner, as if he was of a sacrificial victim, apart from observing that victimisation was a charge by an employee against the employer and therefore, it must be properly and adequately pleaded, giving all particulars, on which, the charge is based, to enable the employer to fully deal with them and the fact that there is a Union espousing the cause of the employee in legitimate Trade Union activity and he is a member or acting as an office bearer thereof, is, *per se*, no crucial test. On such observations, Mr. Chowdhury indicated that the fact that the said employee was an active Trade unionist and took due and active interest in the dispute, would not be enough to hold that his actions, as in this case, were justified. While on the point, further reference was made to the case of *S. Palani-Vs-Bajara Textiles Jhesi & Anr.*, 1991(63) FLR-877. This case has indicated that the fact that the employee is an office bearer of the Union, would not make him immune from disciplinary action. It has further been pointed out by Mr. Chowdhury on that, no interference should at all be made with the findings of the Disciplinary Authority, as those findings were duly made in respect of each Articles of Charges. To justify the stand on this, reference was first made to the case of *Ram Kumar Vs. State of Haryana*, AIR 1987 S.C. 2043, where the punishing authority agreed with the findings of the Enquiry Officer and accented the reasons and on such, it has been observed by the Supreme Court, such order by the punishing authority, could not be said to be a non speaking order and in making such order, principles of natural justice were not violated. Then, a further reference was made to the case of *Union of India & Ors. Vs. K. L. Rajappa Menon*, AIR 1970 S. C. 748. In that case, it has been observed that the procedure, which is followed under Article 311(2) of the Constitution, of

affording a reasonable opportunity, includes by giving of two notices i.e. one at the enquiry stage and the other, when the competent authority, as a result of the enquiry, tentatively determines to inflict a punishment. It was obvious that unless the disciplinary authority or the competent authority arrived at some tentative decision, it would not be in a position to determine, what particular punishment is to inflict and a second show cause notice, cannot be issued, without such a tentative determination. The case under consideration was one on a *Railway Servants Conduct & Disciplinary Rules* and more particularly under Rule 1713. Mr. Chowdhury, thus submitted that there was no shortfall in the instant case, about the above mentioned prerequisites, and as such also, no interference should be made.

69. As would appear from the statements recorded earlier that there was a Criminal Proceedings against the said employee, where he was found guilty, but placed under the provisions of Probation of Offenders Act. Such determination, as would appear from Ext. M-9, was also claimed by Mr. Chowdhury, to be a case of conviction. To establish, that such determination would not be a bar, in taking disciplinary action against the said employee, reference was made to the case of *Union of India & Ors. Vs. Bakshi Ram*, 1990 Lab I.C. 805. In that case, while on the scope of Section 12 of Probation of Offenders Act (20 of 1958), it has been indicated that release of offender on probation does not obliterate stigma of conviction. It was also pointed out by him further that admittedly, from such order, as would appear from Ext. M-9, the said employee took an Appeal, which was rejected and for the effect of such rejection, Mr. Chowdhury relied on the determinations in the case of *Ramautar Lal Jan Vs The Ministry of Transport & Ors.*, AIR 1974 S.C. 326. This determination according to me, would not really help Mr. Chowdhury, to establish his contentions as above. He also referred to the case of *Sutaida Cloth Stores Vs. Labour Court*, 1992 (64) FLR 347 and claimed further that when the case here, is one of dismissal and not retrenchment, notice pay as claimed, was not required to be paid and if necessary, action of dismissal can be justified by the management, by leading relevant evidence, even if, it is found that the enquiry was defective.

70. It was further pointed out by Mr. Chowdhury, in answer to the case of the said employee, that the punishment was disproportionate and that the same, according to him was not so and he pointed out that on the basis of the determinations in the case of *Wimco Sramik Union Vs. Seventh Industrial Tribunal & Ors.* (Supra), which was a case of stealing, and stated further that this case, can be decided, as here, the case is one of assault to a senior officer, which according to him, could not but and should be held to be a grave misconduct, and which has in fact happened.

71. Mr. Chowdhury then submitted that the cases as referred to by and on behalf of the said employee, were of no help or any avail or assistance, to establish the contentions of the said employee and more particularly that the order of dismissal in this case, was a nullity or invalid. But, on taking a total view of the cases as cited at the bar, Mr. Chowdhury claimed, there is no way out, but to hold that the said employee was guilty of the serious charge, for which he was charged and consequent thereto, he was duly dismissed. He submitted further that in the facts and circumstances of the case, the said employee should not be exonerated in any view of the matter or because of the submissions that the punishment was too harsh or severe, as the offence, in assaulting a Senior Officer, must be a serious and severe misconduct and if such lenient view, as has been asked to be taken, is really taken or allowed to be taken, that would defeat and offend Industrial Discipline. Mr. Chowdhury, of course could not deny or dispute the fact that in appropriate cases the Tribunal, in terms of section 11A of the said Act, which was inserted by Act 41 of 1971, with effect from December 15, 1971, may have the power to reduce the punishment as imposed, in appropriate cases.

72. While on his submissions that the cases as cited by or on behalf of the said employee, were not applicable in this case, Mr. Chowdhury specifically pointed out that the determinations in *Sharma (M.P.) Vs. Industrial Court*, 1986(1) L.J. 99, are distinguishable on the facts of the case. He further claimed that since the case of *Janta Pictures and Theaters Ltd.-Vs- Anulya Chakraborty*, 1956(2) LLJ 67, was a case of

no enquiry, the same will also have no application in this case, as here, enquiry was duly held. It was further pointed out by him that the case in 1956(1) L.J. 199 will also not apply, as the same was not a case of departmental enquiry. Apart from the above, the other cases as cited by or on behalf of the said employee, by the said Union were claimed to be not appropriately applicable on facts.

73. On the basis of the submissions of the parties, as made on facts and applying the tests in the cases as cited at the Bar and their submissions, on them, I find that the said employee did receive due opportunities to defend his case and he could not establish that he was not guilty of the charges, as levelled. Such being the position, the punishment of the said employee cannot ordinarily be interfered with. But then, the question would be, what should be the form of the order and extent of the punishment in the facts of the case. Ordinarily, in a case of the present nature, the order of dismissal is consequential, but there may be exceptions, where, under Section 11A of the said Act, the Tribunal retains its power to make appropriate orders, even by imposing lesser punishments, on the employee, who is found guilty. I agree that the said employee was guilty of the charges as levelled against him, which again were grave. But, one thing is certain that the other co-employee Sri Mukul Sen, although was charged and the enquiry against him was held jointly with the said employee, has been exonerated lightly and there is also no doubt or any dispute that the said employee was efficient, diligent and there was no prior complaint against his work. The imposition of a lesser punishment in his case, should, thus be considered. It may be that in his exuberance as an active Trade Unionist here, to some extent, which he should not have done and should not have overshoot his limits, which he has done and for such overshooting his limits as an active Trade Unionist, I think he should not be saddled with the extreme punishment of dismissal/termination of service and ends of justice will duly be satisfied, if, the said employee, instead of the order of dismissal, is directed to suffer the order of punishment of withholding two increments with cumulative effect. To take part actively as a Trade Unionist is not an offence, but such taking part, should be tried to be controlled and interfered with, if as a consequence of such activity, the employee concerned behaves in an indiscipline way, as in this case, as otherwise, in terms of submissions of Mr. Chowdhury, industrial discipline cannot be maintained or expected to be retained.

74. In view of the above, I answer the Reference in the affirmative and in favour of the said employee and to the extent as indicated earlier.

75. This is my Award.

Dated, Calcutta,

The 7th May, 1993.

MANASH NATH ROY, Presiding Officer.

नई दिल्ली, 23 जून, 1993

का.प्र. 1537-औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुगुण में, केन्द्रीय सरकार, से भारत कोयला कॉल लिमि. के कतरास प्रोजेक्ट के प्रबन्धन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुसूचित में विनिर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकांश, (म. 2), घनवाह के पंनपट को प्रकाशित करने के, जो केन्द्रीय सरकार को 22-6-93 को प्राप्त हुआ था।

[सं एन-20012/267/90-आई आर. (कोन-1)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 23rd June, 1993

S.O. 1537.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal (No. II) Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Katras Project of M/s. BCCL and their workmen which was received by the Central Government on 22-6-1993.

[No. L-20012/267/90-IR(Con-I)]

B. M. DAVID, Desk Officer.

1457 GI/93--5

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

Shri B. Ram,

Presiding Officer

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act., 1947.

Reference No. 29 of 1991

PARTIES :

Employers in relation to the management of Katras Project Area of M/s. Bharat Coking Coal Limited, P.O. Malkera, Dist. Dhanbad and their workmen.

APPEARANCES :

On behalf of the workmen : Shri S. Bose,

Secretary,

R.C.M.S. Union

On behalf of the employers :

Shri B. Joshi, Advocate

State : Bihar.

Industry : Coal.

Dated, Dhanbad, the 11th June, 1993

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/267/90-I.R. (Coal-I) dated, the 19th March, 1991.

SCHEDULE

"Whether Shri J. P. Srivastav and 39 others listed in the annexure are workmen of the management of Katras Project Area of M/s. Bharat Coking Coal Ltd. and whether the demand of the Rashtriva Colliery Mazdoor Sangh that these persons be reinstated in the services of the said management is justified? If so, to what relief are these persons entitled?"

2. The concerned workmen namely Shri J. P. Srivastav and 39 others as per annexure of the reference want declaration that they are employees of the management of M/s. B.C.C.L. They further want reinstatement with effect from July, 1987 with the continuity of service since early 1975. They claim to have been working as Tyndal in Katras Area since 1985. They worked as such till June, 1987 and thereafter they were shown as employed through contractor in Katras Project Area. It is stated that in and around May, 1987 M/s. BCCL bifurcated Katras Area and carved out a new portion under the name and style of Katras Project Area. The concerned workmen claimed to have been divided in 4 groups and each group consisted of 10 tyndals with one group leaders, and the group leader was known as Tyndal Jamadar. It is stated that till June, 1987 they worked in different collieries of Katras Area. While doing their duty they had been handling heavy materials as per direction of the officers of the BCCL management and they were also paid by BCCL at area level. They were stated to be in control, administration and financial control of BCCL before or after June, 1987. The concerned workmen after having put in so many years of service requested the management for their regularisation but to no effect. Even the conciliation proceeding failed giving rise to the present reference.

3. The management has denied the relationship of employer and employee between the concerned workmen and the management. It is stated that Shri J. P. Srivastava was the contractor engaged for carrying out misc. contract job as

and when required. The contractor recruited his own men and it was he who had been supervising and exercising control over them. The contractor hardly engaged 10 persons to accomplish the contract job. The payment was also made by the contractor and the management had nothing to do with it.

3A. It is stated that the main contract job was to transport the materials including machineries from one place to another which is not the job of Tyndals. The main job of the Tyndal according to the management, was to dismantle and erect heavy structure. They are also required to install machineries and plants with the help of Mechanical and electrical fitter. On the other hand transportation of materials are the job of General Mazdoors or the helpers or contractors workers. It is also stated that the concerned workmen were never in the employment of Shri J. P. Srivastava. Actually persons numbering 8 to 10 did not raise industrial dispute and thus the present reference is out come of unfair labour practice. Lastly it was stated that the job allotted to Shri Srivastava was temporary in nature. On these grounds it is stated that the demand of the union merits no consideration and it is liable to be rejected.

4. The question for consideration is as to whether the concerned workmen are employees of the management of BCCL and whether they can be reinstated or not with continuity of service.

5. At the very outset it was contended that the question of reinstatement arise only when a workman is discharged, retrenched or dismissed from service. Shri J. P. Srivastava while deposing as WW-1 on 24-3-1993 stated that since the year 1975 they have been working continuously and still they are working as Tyndals. In view of such statement there could have been no question of reinstatement. So the only question for consideration is as to whether they are employees of the management or BCCL or not.

6. The concerned workmen claim to have been working as Tyndal since the year 1975 in Katras Area and only in July, 1987 they were declared employees of contractor and thus their service conditions were changed without their knowledge. This statement in the W.S. simply suggests that they had been working as Tyndals independently till June, 1987 but we have no paper to support this fact. They have no appointment letter, no identity card nor pay slip. Thus this assertion merits no consideration.

7. The management admitted to the extent that Shri J. P. Srivastava (WW-1) was the contractor who used to be entrusted with the work of transporting machineries and the materials from one place to another as and when required. The union has filed Ext. W-1 series which are the repairing order slips of the year 1989, 1990 and 1991. The repairing and transporting of the machineries seemed to have been done by everyday throughout the whole year.

8. There is yet another document which are work orders filed in bunch for the period from 1978 to 1991. We have no paper prior to 1978. These work orders have been marked Ext W-2 series. These work orders will show not only the nature of work but also the period. The management has claimed that the contractor Shri Srivastava was used to be given contract job which were of temporary nature. But the continuous period covered right from 1978 to 1991 simply reveals its permanent nature. Significantly it may be noted that in these work orders Shri Srivastava has been shown as Tyndal contractor. This means he was the contractor of the Tyndal. I will discuss as to who were the Tyndals later on but the designation manifestly speaks that he has all along been getting done his work by the Tyndals in different collieries of Katras Project Area.

9. First of all let us see the nature of work assigned to the contractor. According to the management he was given contract of transporting materials and machineries from one place to another and also from surface to underground vice-versa

I think the work of Tyndals are not confined to transporting of materials only. This much work can be done by general mazdoor and there was no necessity of engaging any Tyndals. The Tyndal has been defined in the book (Nomenclature, Job Description and Categorisation of Coal employees. It runs as follows :—

A workman generally employed in moving engineering stores, drums of oil and greases. Also responsible for erection, dismantling of structures and installation and withdrawal of machinery."

10. From the definition it is clear that a Tyndal is also responsible for erection, dismantling of structure and installation plus withdrawal of machinery. MW-1 Shri S. P. Chandel, Dy. C.M.E., Katras has stated that Shri Srivastava was mostly assigned with the work of carrying material from one place to another. He was sure in his evidence that Shri Srivastava was never assigned of any work of installation of structure and machineries. He was also sure that Shri Srivastava had no knowledge of such work. In cross-examination he admitted that Tyndal is one of the permanent employee, of the management of BCCL. Shri Srivastava was present in the Court whom he recognised.

11. Now let us have a look to the work order (Ext W-2) series. Some of the instances of the work order database may be stated here for convenience and proper appreciation of the fact.

Date	Nature of work
31-1-80	Uncoiling of endless haulage rope.
13-12-83	Erection of A type pole.
17-7-83	Dismantling and transporting 4" dia.
11-4-83	Dismantling, carrying stacking 6" pipe
18-7-93	Construction of the haulage room.
17-11-84	Transporting, dismantling fitting boring machine from A.P. Colliery underground to K.Q. colliery underground.
4-4-80	Installation and dismantling work.
15-10-80	
3-1-87	Dismantling, jointing of 11 deep to conveyor deep.
5-4-87	Erection of 3 piece M.S. girder length 16"-8" each, 10"-6" at K.Q. incline mouth.
14-4-84	Erection of electrical pole.

There are several hundreds of the other instances showing that Shri Srivastava was entrusted with the work of Tyndal. No doubt the work orders are mostly be transporting of materials and machineries but the instances of the erection, installation and dismantling are not few. In view of these things I am to hold that the contractor Shri Srivastava was getting the job of Tyndals done and it was simply wrong to suggest that he was assigned the contract of transporting materials and machineries only.

12. The above fact can be well supported from the noting sheet (Ext. W3 series). Before giving contract note sheets were prepared and necessary sanction of the amount was obtained from the G.M. of the Area. From Ext. W-1 and W-2 series it is well established that the work was being

done continuously for years together and it was wrong to suggest that the contractor was given job temporarily as and when required. The nature and character of the work can be determined on the basis of its continuity. The job to be performed by the contractor was continuous process for years together so it was definitely a job of perennial nature. As regards the engagement of workmen to such job is concerned reliance was placed upon an authority reported in SCLJ Vol 5 3474. Their Lordships were pleased to hold that to be a permanent workman it was not necessary that he should be engaged throughout the year on permanent job. What is necessary is that the work on which he is engaged is of permanent nature and lasts throughout the year. It was held that it was not necessary that the workmen should be engaged throughout the year. Particularly in this case we find that the contractor Shri Srivastava was given contract almost everyday in month lasting for years together. In this way it is proved that he was getting permanent nature of work done by the Tyndals. Again since it was perennial nature of work the engagement of workmen by the contractor carries no meaning. Because a contractor labour cannot be engaged on permanent work since after the abolition of contract labour (Regulation and Abolition) Act, 1970. If a workman is engaged on permanent work he will be treated as the workmen of management.

13. Now the next important question for consideration is as to whether the concerned workmen were ever engaged by Shri Srivastava, Tyndal Contractor. The management has stated that none of the concerned workmen were ever engaged by Shri Srivastava. They also stated that 8 to 10 workmen engaged by him never raised industrial dispute. Surprisingly enough the management has not disclosed any name who worked under the contractor and in that view of the matter such statement merits no consideration. On the other hand Shri Srivastava stated in his evidence that he never issued any appointment letter to any workman. We have no other paper except Ext. W-4 to show that some of the concerned workmen worked under Shri Srivastava. Even Ext. W-4 contains the name of 12 to 13 persons. This is the photo copy of the weekly wage register showing payment to the workmen which has been duly countersigned by the LEO(C). Of course it does not bear the signature of any authority of the management but the LEO(C) is also not a private person. He is one of the Govt. official and the payment to the workers are certified by him. I find that the weekly payment register starts from Sl. No. 30 and lasts at Sl. No. 42. In one of the weekly sheet the sl extent to 43 including the name of one Vinod Kumar Mishra. Out of these 14 names the names of Shri B. R. Ghosh, Jodhan Singh, Hoda and Vinod Kumar Mishra and Jalaluddin Khan do not agree with the names given out in the annexure of the order of reference. The remaining 9 names definitely are to be found in the annexure they are Joginder Singh, Uttam Pandey, Ramkripa Singh, Tribhuban Singh, Mithilesh Kumar Singh, Vijay Kumar Singh, Ravindra Kumar Singh, Ramnaresh Singh and Hararam Singh. We have no record to show that other concerned workmen ever worked under the contractors Shri J. P. Srivastava. Certainly J. P. Srivastava was the contractor and his name appears everywhere. Thus I am to hold that all the above 10 workmen including the contractor worked as Tyndal and since they were working in permanent nature of job, they will be deemed to be the employees of the management. It is held accordingly. If they have been stopped they be reinstated within 2 months from the publication of the Award. Their continuity of service will be maintained.

This is my Award.

B. RAM, Presiding Officer.

ANNEXURE

S. No.	Name of the workmen
(1)	(2)
1	Shri J.P. Srivastava
2	„ Subnarain Singh
3	„ Kanhaiya Pd., Srivastava
4	„ Udai Kr. Srivastava.
5	„ Awadesh Pd. Singh.

(1)	(2)
6.	Shri Akhileshwar Singh
7.	„ Pasupathinath Lala.
8.	„ Umashanhar Singh.
9.	„ Harishankar Singh.
10.	„ Mithilesh Kr. Singh.
11.	„ Ramchrip Singh.
12.	„ Duryodhan Singh.
13.	„ Rabindra Kr. Singh.
14.	„ Shankar Yadav.
15.	„ Narash Kumar.
16.	„ Chandrama Paswan.
17.	„ Mukesh Kumar.
18.	„ Chabila Singh.
19.	„ Ajay Kr. Singh.
20.	„ Ashoh Kr. Singh.
21.	„ Sudhir Kr. Singh.
22.	„ Nibal Khan.
23.	„ Salendra Singh.
24.	„ Yogendra Singh.
25.	„ Bijay Kr. Singh.
26.	„ Ramnaresh Singh.
27.	„ Kamala Singh.
28.	„ Darogi Paswan.
29.	„ Rajnath Singh.
30.	„ Prakash Mahato.
31.	„ Ab. Sattar Khan
32.	„ Binoshwar Singh.
33.	„ Ramakant Singh.
34.	„ Anil Kr. Singh.
35.	„ Botai Yadav.
36.	„ Uttam Pandey.
37.	„ Tribhuban Singh.
38.	„ Haritam Singh.
39.	„ Salauddin Khan.
40.	„ Prem Kr. Srivastava.

[F. No.]

B. RAM, Presiding Officer,

नई दिल्ली, 23 जून, 1993

का. भा. 1538.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, बैंक ऑफ इण्डिया के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकार, बम्बई के पंचद को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-6-1993 को प्राप्त हुआ था।

[गंख्या एल-12011/64/90-आई. आर. (बी-2)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 23rd June, 1993

S.O. 1538.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, BOMBAY as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BANK OF INDIA and their workmen, which was received by the Central Government on 23-6-1993.

[No. L-12011/64/90 IR (B. II)]
B. M. DAVID, Desk Officer.

ANNEXURE

नई दिल्ली, 24 जून, 1993

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. : 1, AT BOMBAY

PRESENT :

JUSTICE SHRI. R. G. SINDHAKAR
PRESIDING OFFICER

Reference No. : CGIT-1/3 of 1991

PARTIES :

THE EMPLOYERS IN RELATION TO THE MANAGE-
MENT OF BANK OF INDIA

and

THEIR WORKMEN

APPEARANCES :

For the Employer : Mr. L. L. D'Souza, Officer.
For the Workmen : No appearance.

Industry : Banking

State : Maharashtra

Bombay, dated the 14th day of June, 1993

AWARD

"Whether the action of the management of Bank of India, in terminating the services of S/Sri R. N. Patil, N.D. Ghag, and P.G. Mohite, Sub-Staff with effect from September 1986 is justified? If not, to what relief the workmen concerned are entitled to?"

The above reference has been made by the Government of India, Ministry of Labour by order dated 14-01-1991.

Statement of claim has been filed by the Union on behalf of the workmen, and reply thereto has been filed on behalf of the Bank.

The workmen are contending that they were employed as Subordinate Staff at the Ulhas Nagar Branch of the Bank during the years 1984, 1985 and 1986. Though they were not given any order of employment, the employees were working continuously in the service of the Bank at Ulhas Nagar Branch. They were paid salary as per the scale of Sub-Staff for 6 months. However, salary for weekly offs was not paid alongwith the monthly salary, but the same was paid separately after the matter was taken up by the organisation. The workmen further stated that they have worked for more than 240 days in a year preceeding their termination. They say that they were employed in accordance with the Bi-partite Settlement, under clause 20(7) dated 19th October, 1966. They contended that by not taking them up as permanent employees, the Bank has violated the provisions of Sastri Award, Para-495. They further stated that the Bank has not complied with the provisions of the Industrial Disputes Act, 1947—Section 25(b) also. Their contention is that in accordance with Sen Award they should be deemed to have been confirmed after a period of 6 months of their service, and that has also not been done by the Bank. In substance, their contention is that the termination is not justified and is illegal.

The Bank has raised several contentions in its reply. Maintainability of the claim is challenged. It is also contended that the Union has no locus-standi to espouse the cause of the workmen, that no resolution has been passed by the Union to that effect. It is also contended that they were not appointed as regular Sepoys, but were engaged to work on leave vacancies for a specific number of days. According to the Bank, they were engaged as Budlee Sepoys on contractual purely temporary basis and not as regular sub-staff. The contention that their termination is not proper and legal is denied.

The workmen however, have now informed the General Secretary of the Bank of India Workers' Organisation that the case should be withdrawn. The Organisation has in turn requested this Tribunal to close the matter in view of the workmen's request to them. The workmen have also addressed a letter to this Tribunal requesting to treat the matter as closed. The representative of the Bank Mr. D'Souza has endorsed his no objection to the matter being treated as closed. In view of this, it is not necessary to examine the rival contentions. The matter is hereby disposed of, and Award accordingly.

R. G. SINDHAKAR, Presiding Officer.

का.आ. 1539:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में केन्द्रीय सरकार से. भारत कोकिंग कोल लिमि. की अमलाबाद कोलियरी के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुसूचन में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2) धनबाद के पंचायत को प्रकाशित करती है जो केन्द्रीय सरकार की 24-6-93 को प्राप्त हुआ था।

[सं. एल-24012/8/86-डी-4 (बी)]
बी.एम. डेविड डेस्क, अधिकारी

New Delhi, the 24th June, 1993

S.O. 1539.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal (No. II), Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Amlabad Colliery of M/s. BCCL and their workmen which was received by the Central Government on 23-6-93.

[No. L-24012/8/86-D.IV(B)] [R(C.I.)]
B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri B. Ram, Presiding Officer.

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 256 OF 1986

PARTIES :

Employers in relation to the management of
Amlabad Colliery, Bhowra Area of M/s.
Bharat Coking Coal Limited and their
workmen.

APPEARANCES :

On behalf of the workmen : Shri S. Bose, Secretary,
R.C.M.S. Union.

On behalf of the employers : Shri R. S. Murthy,
Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, Dhanbad, the 15th June, 1993

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012/8/86-D.IV(B) dt. July, 1986.

SCHEDULE

"Whether the action of the Management of
Amlabad Colliery, Bhowra Area of M/s.
Bharat Coking Coal Ltd. (Dhanbad) in

retiring Sh. Bangali Mahto, Trammer from service with effect from 1-7-1985 is justified? If not, to what relief is the said workman entitled?"

2. In this case both the parties appeared but did not file their respective W.S. documents etc. Subsequently when the case was fixed, both the parties appeared before me and filed a Joint Compromise Petition under their signature. I heard both the parties on the said petition of compromise and do find that the terms contained therein are fair, proper and beneficial to both of them. Accordingly I accept the said Joint Compromise petition and pass an Award in terms thereof which forms part of the Award as Annexure.

B. RAM, Presiding Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 2, DHANBAD

IN THE MATTER OF REF. NO. 256/86

PARTIES :

Employers in relation to the Management of Amlabad Colliery, Bhowra Area, Bharat Coking Coal Ltd., P.O. Bhowra, Dhanbad.

AND

Their workmen.

JOINT COMPROMISE PETITION OF EMPLOYERS AND WORKMEN

The above mentioned Employers and the workmen most respectfully beg to submit as follows :—

(1) That the employers and the workmen have jointly negotiated the matter covered by the above reference with a view to arriving at an amicable and mutually acceptable settlement.

(2) That as a result of such negotiations, the Employers and the workmen have agreed to settle the matter covered by the above reference on the following terms and conditions :—

(i) It is agreed that the concerned workman Shri Bangali Mahato, who was retired from the post of trammer (I.D. Card No. 108956) by the Management w.e.f. 1-7-1985 will be referred to the Apex Medical Board of B.C.C.L. for the assessment of his age within three months of the issue of this agreement.

(ii) It is further agreed that if the age of Sri Bangali Mahto is assessed at below 60 years by the Apex Medical Board of BCCL, the Management shall allow Sri Bangali Mahato to resume duty in the same post of Trammer soon thereafter.

(iii) It is agreed that for the intervening period from 1-7-1985 and till the date of resumption of duty (in the event of Sri Bangali Mahato's age being assessed as

below 60 years by the Apex Medical Board, (he will not be entitled to any back wages except continuity of service.

(iv) It is agreed that this is an overall, in full and final settlement of all the claims of the workman concerned and the sponsoring Union, Rashtriya Colliery Mazdoor Sangh arising out of the above reference.

(v) That the employers and the workmen hereby declare and confirm that they consider the above terms of settlement as just, fair and reasonable to both the parties.

In view of the above, the employers and the workmen most respectfully, pray that the Hon'ble Tribunal may be pleased to accept the above joint compromise petition and dispose of the reference in question by giving an award in terms thereof.

G. D. PANDEY

Vice President,

Rashtriya Colliery Mazdoor Sangh.

M.K. GUPTA,

General Manager (Project), Amlabad.

Bhowra Area, Area No. XI

Bharat Coking Coal Ltd.

For & on behalf of the workmen :

SATISH RAJAK,

President R.C.M.S. Amlabad Br.

For & on behalf of Employers :

B. PRASAD,

Dy. C.P.M., Bhowra Area.

RAL. S. MURTHY,

Advocate for the Employees

नई दिल्ली, 24 जून, 1993

का.आ 1540 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महानगर टेलीफोन निगम लिमिटेड बम्बई के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लेबर कोर्ट-1 बम्बई के पक्षों को प्रकाशित करती है जो केन्द्रीय सरकार को 24-6-93 को प्राप्त हुआ था।

[संख्या एल-40012/143/90-आईआर (डो-यू)]

बी.एम. डेविड, ई.ए. डिवाइस

New Delhi, the 24th June, 1993

S.O. 1540.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Bombay as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Mahanagar Telephone Nigam Ltd., Bombay and their workmen, which was received by the Central Government on 24-6-93.

[No. L-40012/143/90-IR(DU)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, AT BOMBAY
PRESENT :

Justice Shri R. G. Sindhakar, Presiding Officer.

REFERENCE NO. CGIT. 1/43 OF 1991.

PARTIES :

The Employers in relation to the Management
of Mahanagar Telephone Nigam Limited,
Bombay.

AND

Their Workmen.

APPEARANCES :

For the Employer : Shri Shaikh, Assistant Engineer
For the Workmen : No appearance.

INDUSTRY : Telecommunications

STATE : Maharashtra

Bombay, dated the 11th June, 1993

AWARD

“Whether the management of Mahanagar Telephone Nigam Limited, Bombay were justified in terminating services of Shri Muralidhar Y. Shirgaonkar, Casual Labourer with effect from 1-2-1987 (from o/o Asst. Engineer (Pr. -C) Malabar Hill Telephone Exchange of MTNL). If not, what relief is the workman entitled to ?”

The above reference has been made to this Tribunal by the Government of India, Ministry of Labour, New Delhi, by letter dated 19th April, 1991.

The workman filed his statement of claim. He states that he was employed as a Casual Labourer since January 1981 and was working at the Malabar Hill Telephone Exchange of the Mahanagar Telephone Nigam Limited, (hereinafter referred to as MTNL). He states that inspite of his clean, spotless and unblemished service record, he received a letter dated 31-12-1986 alleging that he had committed serious lapses in the duties assigned to him and thereby causing delay in finding out damages in working cables. By the said letter it was also alleged that the workman had passed wrong entries in the records and the same was rectified latter by cancelling the entries passed earlier in order to hide his mistake. He was also informed by the said letter that his name will be removed from the muster with effect from 1-2-1987. The workman submits that he had by his letter dated 9-1-1987 given a correct and factual explanation to the management. His grievance is that without considering the said explanation and without conducting any enquiry as required under the Model Standing Orders, the employer removed his name from the muster with effect from 1-2-1987. The workman, therefore, submits that the action of the management in terminating his services amounted to retrenchment and is illegal, unjust, improper and arbitrary, and required to be quashed.

He further states that the order of termination is bad on the ground that the employer has failed to hold a departmental enquiry as per the provisions of the Model Standing Orders (Central) Rules, 1946, as applicable to the Central Government Establishments, and is against the principles of natural justice. He further states that he has committed no mistake as alleged by the management in their letter dated 31-12-1986, and also there is no evidence with the management in support of the allegations levelled by the employer against the workman. At any rate no evidence was brought to the notice of the workman.

He also contends that the removal amounted to retrenchment under Section 2 (oo) of the Industrial Disputes Act, 1947 and that was not in accordance with the provisions of the Industrial Disputes Act, 1947, Section 25(F), inasmuch as no retrenchment compensation was paid nor offered. He also contends that no witness was examined in his presence, not any documentary evidence produced, or any report of the Enquiry Officer made available to him. According to him no reasons are assigned for his removal with effect from 1-2-1987. He also contended that the letter dated 31-12-1986 clearly states that the management had decided to remove the workman from services and had pre-decided the issue. Finally he prays to declare that the action of the management in removing his name was unjust, and re-instate him in service with full back wages.

By the written statement the management contended that removal show cause notice was issued on 31-12-1986 and, thereafter, as per the provisions of the Model Standing Orders as applicable to the employer Departmental Enquiry was also conducted, in which the workman filed his written submission and oral evidence was also taken. The proceedings of the departmental enquiry conducted on 31-12-1986 is recorded in three languages, Hindi, English and Marathi. It is further contended that the workman was given one more opportunity vide the management's letter dated 3-1-1987 to submit his explanation if any, and, therefore, it is not correct to say that the management had to documentary evidence. The workman is entitled to no relief.

It is not disputed that the services of the employee, Shri Muralidhar Y. Shirgaonkar came to an end on 1-2-1987. It is this termination that is the subject matter of the reference. The employee contending that the termination was arbitrary, illegal, improper and unjust, as much as it is not in compliance with the provisions of the Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946. It is also contended that even rules of natural justice were not followed.

The management contends that the removal was after a departmental enquiry in accordance with the provisions of the Model Standing Orders as applicable to the employer.

No oral evidence has been led on either side. The employer however, produced 4 documents alongwith the written statement (Exhibit-I to IV). Exhibit-I is a letter dated 31-12-1986. It is on the subject “REMOVAL NOTICE REGARDING”. The reference is “PRESSURE READING IN PRESSURISED

PRIMARY CABLE OF MALABAR HILL—PATROLING IN MALABAR HILL AREA—READING ON LI B 34 ON 29/12/86. It states that the under signed i.e. the Assistant Engineer was convinced that he has committed serious lapses in duties assigned to him, causing delay in detecting the damage on working cable. It further states that he has made wrong entries in the pressure reading record to hide the correct status of the cable and later on corrections were made to hide his mistake. It is also stated that his action on his part amounted to crime, resulted in loss and damage to MTNL—Bombay, and hence "notice is hereby issued with effect from 1-1-1987 for removal of your name with effect from 1-2-1987".

Exhibit-III is a record in the form of questions and answers, and it states that it is a record of what took place on 31-12-1986 in the presence of three persons and that was the record of the enquiry. The said document is signed on 3-1-1987. It is in three languages viz. Hindi, English and Marathi. This is, according to MTNL, the enquiry report. The last document, at Exhibit-IV purports to be the notice calling upon the employee to explain "Your case". This explanation is to be given within 7 days. In the reference at item No. 3 is mentioned "Enquiry conducted by the under-signed on 31-12-1986 (copy given)." This has probably a reference to the document at exhibit-III. Item No. 2 is consideration on removal notice. This has reference to Exhibit-I. Exhibit-II is a reply given by the employee to this letter dated 3-1-1987. (Exhibit-IV). This is an explanation which he offers. There is no termination order produced on record and probably, MTNL relies upon exhibit-I as the order of termination. If that be so, it has no reference to the explanation at exhibit-II. Obviously it cannot, because exhibit-I is dated 31-12-1986. Whether exhibit-I preceeds exhibit-III, or, exhibit-III preceeds exhibit-I need not detain one longer, because exhibit-III is signed on 3-1-1987, and exhibit-I does not make any reference to exhibit-III, the alleged enquiry report. Therefore, it appears that this exhibit-I was addressed to the employee and wherein decision was taken for removal with effect from 1-2-1987, and this is a one month's notice before the termination. It has no reference to any standing orders, it has no reference to any chargesheet given to the employee, it has no reference to any enquiry held, it has no reference to any explanation called for, and offered. In these circumstances it would be difficult to hold that there was a departmental enquiry conducted with regard to the alleged misconduct of the employee.

The Model Standing Orders provide in Rule 14, the procedure for disciplinary action for misconduct. What is a misconduct has been stated in Sub-Rule 3 and what is expected to be done is mentioned in Sub-Rule 4. Not only has he to be given an opportunity to appear, but also, an opportunity to be represented by an office bearer of the Union, of which he is a member. If at the conclusion of the enquiry, he was found to be guilty of the charges framed against him, and it was considered necessary to impose the punishment, he has to be given reasonable opportunity to make a representation. Not only as stated earlier, no charge was framed against him, no explanation was sought, and some questioning was done in the presence of some persons on 31-12-1986, and no report of any

enquiry was made. It cannot be accepted that exhibit-III is a report of that enquiry. It is only a memorandum of the questions put and answers given. It is worth nothing that at the end of the questioning he has been asked about some theft of cable. Under these circumstances, I find that the provisions of the Model Standing Orders with regard to the enquiry proceeding, before the order of dismissal for misconduct have not been complied with. The action is in utter violation of the rules of natural justice, and therefore it is found that the management of Mahanagar Telephone Nigam Limited, Bombay is not justified in terminating the services of Shri Muralidhar Y. Shirgaonkar, Casual Labourer. That order is required to be quashed and set aside. In view of this, the consequence of re-instatement with full back wages to follow.

Award accordingly.

R. G. SINDHAKAR, Presiding Officer

नई दिल्ली, 28 जून, 1993

का.सं. 1541:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओ.एन.जी.सी. देहरादून के प्रबंधन के संबंध नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधि-करण, कानपुर के पंचाट को प्रकाशन करती है जो केन्द्रीय सरकार को 25-6-93 को प्राप्त हुआ था।

[संख्या एन-30012/6/89-आई आर विविध]
बी.एम. डेविड, डेस्क अधिकारी

New Delhi, the 28th June, 1993

S.O. 1541—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of O.N.G.C., Dehradun and their workmen, which was received by the Central Government on 25-6-93.

[No. L-30012/6/89-IR(Misc)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL
CUM-LABOUR COURT, PANDU NAGAR,
KANPUR.

Industrial Dispute No. 226 of 1989

In the matter of dispute between;

Sri Prem Nath

Sanyukt S. chiv,

ONGC Karamchhari Union,

87-1/1, Ballupur,

Dehradun.

And

Chairman

Oil & Natural Gas Commission,

Tel Bhawan,

Dehradun.

Award:

1. The Central Government, Ministry of Labour vide its notification No. L-30012/6/89-I.R. (Misc.) dated 19th September 1989, has referred the following dispute for adjudication—

Whether the action of the management of Oil & Natural Gas Commission Dehradun in terminating the services of Sri Anuj Kaushik Daily rated workman with effect from January 1984 is justified. If not, to what relief is the workman entitled to?

2. The case of the Union in brief is that the workman was engaged by the management of O.N.G.C. in the Engineering Department on daily wages on 1-1-83. He worked as such continuously till 17-1-84. Wages for the months of May, October, November & December, 1983 were paid to him in the name of Ram Sirgh through Muster Roll when no person of this named had been working in the Department. The Union alleges that the order of termination of his services is illegal inasmuch as while terminating his services the provisions of section 25F & 25G were not complied with by the management. Even while recruiting fresh hands no opportunity was afforded to the workman. Thus the management also violated the provisions of section 25H of I.D. Act. The Union has, therefore, prayed for workman's reinstatement with continuity of services and full back wages at the rate at which minimum wages were payable by the Engineering Department on the principle of Equal Pay for Equal Work.

3. The case is contested by the management of O.N.G.C. The management pleads that Sri Anuj Kaushik the workman concerned was not engaged in any of the industrial activities of O.N.G.C. In fact he was engaged as a casual unskilled labour on daily wages for doing a job of Mortarman in the building construction work of residential quarters at Kaulagarh Road, Dehradun on 1-1-83. The management deny that Sri Kaushik worked continuously till 17-1-84. According to the management he did not work in May, September, October, November and December 1983. The undertaking set up in July 1982 at Kaulagarh Road, Dehradun for building of residential quarters closed down in 1986 on account of completion of work on these quarters. The management further pleads that in case any person succeeds in getting the job by impersonation or concealment of correct particulars or with the connivance of some one, then his engagement would be invalid in the Eyes of Law. In fact Sri Kaushik left his job of his own accord after 17-1-84. The O.N.G.C. Act 1959, was enacted by the Parliament and in exercise of the powers vested under section 32 of the said Act, O.N.G.C. framed recruitment

and promotion Regulations, 1980. Sri Kaushik was never appointed in accordance with the said regulations.

4. The management have also raised certain legal pleas. According to the management workman/Union is guilty of laches and inordinate delay. As such the workman is entitled to no relief. The case of Sri Kaushik is at the best covered by the provisions of section 25FFF(2) of the I.D. Act, 1947. Therefore, it is not the case of a worker having lien on any substantive post. It is also pleaded by the management that the present reference order is not aside enough to cover the aspect of illegality of the action of the management. Lastly, the Union has not espoused the dispute according to law.

5. Whereas the Union has examined Sri Kaushik in support of his case, the management have examined two witnesses, Sri C.S. Kurup, Assistant Ex. Engineer and Sri R.S. Sharma Executive Engineer. Besides the management have filed a number of documents.

6. Points which arise for determination in this case are:—

- (1) Where and in what capacity Sri Kaushik had worked;
- (2) For how many days Sri Kaushik had worked during the period of 12 months proceeding the date of alleged termination of his service by the management; and
- (3) Whether Sri Kaushik had abandoned the job of his own accord; and
- (4) Whether the construction work had completed.

Point No. 1:

The case of the Union is that he had worked on daily wages in the Engineering Department since 1-1-89. Neither in the claim statement nor in the rejoinder the nature of duties performed by Sri Kaushik have been given. On the other hand, the management's case is that he worked as a Mortarman on daily wages in the building construction work of residential quarters at Kaulagarh Road, Dehradun. There is not specific denial of this fact in reply in the rejoinder by the Union. Sri R.S. Sharma, management witness has corroborated the case of the management on this point. In his cross examination, the workman has admitted this much that he started working as a daily wager in the construction of residential quarters at Kaulagarh Road. With his affidavit dated 20-11-90 which was tendered by him in his evidence, management witness has proved the documents filed with the list of documents dated 20-11-90. Document No. 1 to 8 are photocopies

of muster rolls of some of the months of admitted working of Sri Kaushik. In these documents Sri Kaushik has been described as Mortarman/mate. Hence management's case that Sri Kaushik had worked as Mortarman in the building construction work of residential quarters at Kaulagarh Dehradun, stands proved.

Point No. 2 :—

8. Whereas the case of the Union is that Sri Kaushik had worked continuously from 1-1-83 to 17-1-84 the case of the management is that he had not worked in the months of May and September to December 1983. The case set up by the Union is that for the months of May and October to December 1983, he was paid wages in the name of one Ram Singh who had never been in the Engineering Department through Muster Roll. In his cross examination Sri Kaushik has deposed that at the time of taking payment of wages of these months every time he came to know that payment was being made to him in the name of Sri Ram Singh in whose name attendance has been marked in the attendance register during these months. He simply took verbal objection at the time of accepting payment of wages but never gave any thing in writing to the Junior Engineer. It was he who had put his signatures in taken of receipt of wages. On the other hand, suggestion in this regard was put to M W. Sri R.S. Sharma, Sri Sharma denied the suggestion and said that such Herapheri does not take place in the ONGC.

9. I am not much convinced about the case set by the Union in support of Sri Kaushik on this point. There are reasons for it. The Union made no attempt to summon the records for the months of May and October to December 1983 in order to prove that signatures of Sri Ram Singh on the Muster Roll in token to receipt of payment of wages of the said months are in the hand-writing of Sri Kaushik. Secondly, it has been admitted by Sri Kaushik that he made no written complaint or objection against it. Thirdly, it does not appeal to mind that the management of ONGC which is quite a big undertaking of Central Government would indulge in such a mal-practice in order to deny any right accrued to Sri Kaushik under the Industrial Disputes Act, 1947. Between April 1983 and June 1983 there is a gap of one month and between August/September 1983 and January 1983 there is a gap of three months according to the Union and there is a gap of four months according to the management. Fourthly, it has been deposed by Sri Kaushik in his cross-examination that on 18-1-84 the Junior Engineer refused to give him work. He admits that no written complaint was made by him against this illegal termination to any officer. It is important to note that the petition

raising an industrial dispute on the point was filed by Sri Kaushik through the Union before the ALC (C) on 4-7-88 as will be evident from document no. 11 of the management's list of document dated 20-11-90. The document has been filed by the authorised representative for the Union. It was for the first time that in the said petition dated 4-7-88 this plea was taken that wages for these months were paid to Sri Kaushik in the name of Sri Ram Singh. At such a late stage it is very difficult for a very big organisation like O.N.G.C. to trace out the person named Ram Singh whose name appear during those months. During this long period of silence on advice, a case of having worked for more than 24 days, could have been cooked up. I am, therefore, not prepared to believe the case of the Union that Sri Kaushik had worked during the said months. If he is taken not to have worked during the months of May and September to December 1983, his number of working days during the period of his alleged termination would come to 212 and if as said to have not worked during the months of May and October to December 1983, the number of working days would come to 242 days.

10. The management have not filed the copy of muster roll of September 1983 with the list of documents dated 20-11-90. The management should have filed it in order to show that even in the month of September 1983 Sri Kaushik had not worked. In view of withholding of these documents by the management an adverse inference can be drawn against the management. The management should have proved their bonafide by filing it in order to prove their case that in the month of September 1983, Sri Kaushik had not worked at all.

11. Therefore, despite disbelieving the case set up by the Union that Sri Kaushik had received wages of the Months of May and October to December 1983 in the name of Ram Singh, it stands proved that during the period of 12 months preceding the date of his alleged termination his services, Sri Kaushik had worked for 242 days as a Mortarman/Mate.

The point is answered accordingly.

Point No. 3 :—

12. The plea of abandonment has been set up by the management. Therefore, the burden lies on the management to prove it. The two witnesses examined by the management have no personal knowledge of the facts of the case. They have based their knowledge on the basis of documents on records. Both of them do not know Sri Kaushik. Therefore, I am not prepared to believe the case set up by the management that Sri Kaushik abandoned the job of his own accord.

13. Point No. 3 is decided accordingly.

Point No. 4 :—

नई दिल्ली, 23 जून, 1993

14. It is the specific case of the management in the written statement that the Undertaking at Kaulagarh Road for construction of residential quarters was closed in 1986 on account of completion of construction work of the residential quarters. Sri R.S. Sharma management witness has corroborated it. In his cross examination he has deposed that the Construction Department was dismantled in 1986 and the Engineers working in the said Department were shifted to other Departments. According to him only one Junior Engineer is there for looking after the maintenance of the colony of ONGC. In his cross examination Sri Kaushik too has deposed that it is quite possible that the work of construction of residential quarters have been completed. Since there is no dispute between the parties on the point, it is held that the construction work of construction of residential quarters at Kaulagarh Road Dehradun was completed in 1986. Point is decided accordingly.

15. The question of reinstatement in the present case does not arise as the construction work of residential quarters was completed in 1986 and the department set up for the purpose was dismantled.

16. In this case in para 8 of the written statement reliance has been placed from the side of the management on section 25FFF(2) of I.D. Act, 1947. From this section it appears that no compensation is payable to any workman if an undertaking set up for the construction of buildings, bridges etc., is closed down on account of completion of work within two years from the date on which the undertaking had been set up. But if the construction work is not completed within two years the workman will be entitled to notice and compensation under that section for every completed years of continuous or any part thereof in excess of 6 months.

17. In the instant case, according to the management the undertaking or construction work was set up in July 82. Therefore as per provisions of section 25FFF(2) of I.D. Act, Sri Kaushik was entitled to notice and retrenchment compensation which, however, was not done in his case. The Union has alleged that Shri Kaushik was getting a daily wage of Rs. 9/-. In the circumstances, Sri Kaushik is awarded a compensation of Rs. 10,000/- in all. Had his services been not terminated illegally he could have continued till last.

18. In view of the findings given above, the action of the management of ONGC Dehradun in terminating the services of Sri Anuj Kaushik w.e.f. 18-1-84, is held as unjustified. Since the undertaking has been closed, Sri Kaushik is awarded a compensation of Rs. 10,000/-.

19. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

का.आ 1542 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक हाफ़ हैदराबाद के प्रबन्धतंत्र के संलग्न नियोजनों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में औद्योगिक अधिकरण हैदराबाद के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 22-6-93 को प्राप्त हुआ था।

[संख्या एल-12012/305/87-डी-II (ए)]

एस.के. जैन, डेस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 23rd June, 1993

S.O. 1542.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of Hyderabad and their workmen, which was received by the Central Government on the 22-6-93.

[No. 12012/305/87-DII(A)]

S. K. JAIN, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT
HYDERABAD

PRESENT :

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal.

Fourth Day of June Nineteen Hundred Ninety Three
Industrial Dispute No. 14 of 1988

BETWEEN :

T. Anoop Singh son of Sri Ganesh Singh, Ex-Cashier-cum-Clerk, State Bank of Hyderabad R/o H. No. 3-2-421, Jalihanuman, Dhoolpeta, Hyderabad. —Petitioner.

AND

The General Manager (Operations-Personnel Department) State Bank of Hyderabad, Gunfoundry, Hyderabad. —Respondent.

APPEARANCES :

Sri Y. Subash and Sri K. Vinod Kumar, Advocates for the Petitioner —Workman.

Sri K. Srinivasa Murthy and Miss G. Sudha, Advocates for the Respondent —Management.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-12012/305/87-DII(A), dt 29-1-88 referred the following dispute under Section 10(1) (d) and (2A) of the Industrial Disputes Act, 1947 between the Management of State Bank of Hyderabad and their workman to this Tribunal for adjudication :

"Whether the action of the Management of State Bank of Hyderabad in dismissing from service Sri T. Anoop Singh, Clerk-cum-Cashier with effect from 4-8-1986 is justified ?

If not, to what relief is the workman entitled ?

This reference was registered as Industrial Dispute No. 14 of 1983 and notice were issued to both the parties.

2. The brief averments of the claim statement filed by the Petitioner-workman read as follows :

That the Petitioner was working as Cashier-cum-Clerk in the Respondent Bank as on 4-8-1986. The Petitioner was first appointed as Peon in the Bank on 9-4-1972 and Promoted as Cashier-cum-Clerk w.e.f. 1-6-1978. It is submitted that on 25-5-1983 it was alleged to have been found shortage of Rs. 10,000.00 comprising of Ps. 100.00 denomination one packet) at about 2.00 P.M. on the said date while tallying the Books while the petitioner and some more cashiers, Head Cashiers and Chief Cashier were working in the reserve counter of Gunfoundry Branch of the Bank and the said amount was alleged to be recovered from the Bank's Recreation Club from a cup-board by the Club-Boy. It is submitted that the Recreation Club is located in an independent building which is no way concerned with the building wherein the reserve counter is existing. It is submitted that although the said recovery was made neither from the possession of the petitioner nor at his instance, the persons who bore grudge against the petitioner being the fast worker depriving their vested interest of over time allowance etc. concocted a false story and obtained certain letters from the other Cashier who are working in the said counter 2 days after the incident and foisted a false case of attempting to misappropriate the Bank's amount against the petitioner. Relying upon the above letters the Disciplinary Authority and Chief Manager of the Bank suspended the petitioner from service w.e.f. 27-5-1983 and two months thereafter issued a charge memo. dt. 29-7-1983 alleging that the Petitioner removed the said amount with intention to misappropriate the same and kept in a almirah at Bank's Recreation Club as the Petitioner was in possession of one of the duplicate keys of that almirah and one of his colleagues had seen him Chole-parking/Canteen at about 11.30 A.M. on the date of incident. It is submitted that the petitioner had clearly explained in his explanation to the charge memo and stated that his possessing of the duplicate key of the cupboard of the recreation club is having no relevance as there are number of duplicate keys in circulation and the original key of it nobody knows. The petitioner explained that his presence at Cycle-parking Canteen as alleged by one of his colleagues at about 11.30 A.M. is also having no relevance since the very remittances of alleged cash was made not before 12.30 P.M. as it happened to be 5th receipt of the transaction. The petitioner also submitted that there is no proof that the particular cash was given to him for counting and he worked alongwith the other Cashiers on a common tale. The concerned Head Cashier who was alongwith them admitted that he had re-checked the amount and whatever amount given to the petitioner was placed to re-counting by the Head

Cashier. The petitioner was also submitted his explanation that he was unnecessarily made involved in the false case by the persons who got personal grudge against the petitioner particularly mentioned the names of the Cashiers who got revenge attitude against him. Out of their tactice the police party was conveniently sent back without handing over the case to them to trace out the real culprit. It is submitted that the Chief Manager-cum-Disciplinary Authority could not satisfy with the above explanation by the Petitioner and issued a strange charge sheet directly appointing an Enquiry Officer to conduct domestic enquiry without seeking any explanation from the petitioner to the charge sheet dt. 29-3-1984 i.e. after 10 months from the date of incident. In the said charge sheet inter alia alleged against the petitioner that the petitioner was handed over cash of Rs. 1,70,000.00 comprising of 11 bundles of Rs. 100.00 denomination notes and 12 bundles of Rs. 50.00 denomination notes for the purpose of counting out of s. 2,25,200.00 received remittance from the employer of APSRTC(I) to credit into their account. It is alleged that the petitioner removed one bundle of Rs. 100.00 denomination and kept it in Cupboard in the recreation club which is said to be recovered through the Club-boy at about 6.30 P.M. when the club boy opened the cub-board, with intention to misappropriate the same and thereby acted dishonestly prejudicial to the interest of the Bank within the meaning of para 19.5(j) of the Bipartite Settlement. In view of the above charge sheet the Enquiry Officer conducted a stage managed domestic enquiry in a most biased and prejudicial manner and against to the principles of natural justice. The domestic enquiry is vitiated because the Enquiry Officer went on overruling the genuine representation and objections made by the representative for the petitioner. The Enquiry Officer not made efforts to called for the relevant and material records which are vital and decide the roots of the case. When the representative for the petitioner representation to call for the original records, viz. original remittance register, kacha register, handling and taking over of the cash register maintained in the reserve counter on the day of incident and the missing cash etc. The Enquiry Officer going on sheltering the Presenting Officer from being produced the relevant records during the enquiry when the presenting officer specifically represented that he had seen the originals of the same. Some of the witnesses have not even completely examined for want of documents and their cross examination was deferred. It is submitted that the Enquiry Officer had closed the enquiry without completing the examination of witnesses and ventured to give his findings against the principles of natural justice. It is submitted that the Enquiry Officer given a most biased and prejudicial findings and he failed to atleast to appreciate the evidence on record and the prevaricative statements of witnesses. The Enquiry Officer erred in not considering the relevance of the recovery of the alleged amount and the responsibility of the petitioner as well as the other Cashier who were working alongwith the petitioner. The Enquiry Officer also erred in not considering the times of the recovery of the amount and the prior intimation of the recovery to the police and

sent the Police back from the scene. It is submitted that the Police was sent back between 5 and 5.30 p.m. on the date of incident whereas the vital witness, the Club Boy who stated that he found the amount at about 6.30 P.M. when he opened the cup-board. The Enquiry Officer also erred in not considering the relevancy of the petitioner present at Cycle-parking Canteen i.e. nearby the Recreation Club at about 11.30 A.M. and the receipt of the alleged Cash was admittedly the 5th receipt of the transaction and each of the transaction will take minimum half an hour. It is also submitted that the entire case is concocted by cooked up letters. Most pertinent aspect is that the alleged amount had not produced or exhibited during the domestic enquiry nor the R.T.C. slips as claimed by the Management that the missing amount is pertains to A.P.S.R.T.C. (1) remittances, still the Enquiry Officer held the petitioner as guilty of the charge. It is submitted that inspite of so many irregularities without giving any thought the Disciplinary Authority-cum-Chief Manager issued a show cause notice dt. 2-6-1986 proposing the punishment of dismissal from service to the Petitioner. Although the petitioner submitted the detailed explanation to the show cause notice dt. 2-6-1986 reiterating his stand and the irregularities committed by the Enquiry Officer. But ultimately the Disciplinary Authority had not considered any thing from the said explanation and the record passed the order of dismissal from service w.e.f. 4-9-1986 and the same is served on the petitioner. The appeal to the Appellate Authority and General Manager (Operations) State Bank of Hyderabad by the Petitioner was rejected after giving formal hearing. Aggrieved by the said dismissal order the petitioner moved for conciliation under Section 2-A of the I.D. Act before the Regional Labour Commissioner (Central) at Hyderabad which was also failed and the management stand reluctantly without there being considering the claim of the Petitioner nor going into the merits of the case. On receipt of the said failure report the Government of India referred the matter for adjudication to the Hon'ble Court in the present reference. It is most respectfully submitted that the order of dismissal from service of the petitioner by the Respondent's Bank is most unjust, illegal and contrary to lay and facts of the case and one which is opposed to the principles of natural justice together to the provisions of Bipartite Settlement rather victimised the petitioner whereas the petitioner was never involved nor committed any act much the act referred in the charge sheet issued to the petitioner. It is also submitted that if not otherwise admitted the punishment of dismissal from service highly disproportionate to the gravity of the alleged misconduct. It is submitted that the Petitioner could not secure any job inspite of his best

efforts from the date of his dismissal from service and actually suffering a lot in these hard days for his no fault or involvement in any of the allegations much less the allegation foisted by the management, against the petitioner nor they proved at any point of time neither on facts nor on the evidence adduced during the domestic enquiry. It is, therefore, prayed that the Hon'ble Court may be pleased to set aside the dismissal order dt. 4-8-1986 and direct the management of State Bank of Hyderabad to reinstate the petitioner into service with full backwages, continuity of service and with all attendant benefits in the interest of justice and enquiry.

3. The brief averments of the counter filed by the Respondent-Bank read as follows :

It is submitted that this Petitioner was initially appointed in the Bank as Sub-Staff (Peon) from April, 1972 and later on, he was promoted as Cashier-cum-Clerk in June, 1978. This Petitioner, in May, 1983 was working in Gunfoundry Branch at the Reserve Counter. The allegation that this Petitioner during his tenure of his service was maintaining a clear and unblemished record and discharging his duties in the respective positions to the utmost satisfaction of his superiors is not correct and the Petitioner is put to strict proof of the same. The allegation that he was considered to be one of the active and fast workers in the Bank and he was also a good sportsman is not correct, and the Petitioner is put to strict proof of the same. It is respectfully submitted that some of the material facts have been stated in wrong perspective to suit to the case of the petitioner. It may be noticed that this Petitioner while he was working as Cashier-cum-Clerk at Gunfoundry Branch was posted at the Reserve Counter as an Asstt. Cashier to count the cash. On 25th May, 1983, the R.T.C. has remitted 11 packets of 100 rupees notes and 12 packets of 50 rupees notes. The packets which were remitted by R.T.C. was having specific seal of R.T.C. on that day. The Head Cashier, in normal course distributed the cash to the Assistant Cashier through the Senior Cashier and Mr. T. Anoop Singh. the Petitioner herein was given 11 packets of 100 rupees and also 12 packets of 50 rupees notes for counting. The cash was not tallied by lunch and there was a shortage of Rs. 10,000.00 comprising of Rs 100 denominations. The Officers concerned verified and tried to balance the cash and realised that there is a shortage of Rs. 10,000.00. This fact was also brought to the notice of the Chief Manager of the Branch, who, in turn took appropriate steps. Sri Anup Singh the Petitioner herein accounted only for 10 packets of 100 rupees notes in the Reserve Cash instead of

11 packets. In view of this misconduct, the Management suspended him from service on 27-5-1983 and issued a Charge Sheet on 29-7-1983. The petitioner gave explanation to the charge sheet and as the Management was not satisfied with the explanation given by the Petitioner, appointed one Sri Anthony Doss as Enquiry Officer to conduct the domestic enquiry. The Enquiry Officer gave full and fair opportunity to the delinquent employee during the domestic enquiry. One Mr. Sitaramarao, the Office bearer of the State Bank of Hyderabad Staff Association represented the case of the Petitioner during the domestic enquiry. All the necessary documents were given to the Petitioner and full and fair enquiry was conducted by following the principles of natural justice. During the course of the enquiry, the Management examined 7 witnesses and the Petitioner representative cross examined the Management's witnesses. As such the allegations in para Nos. 7 and 8 are not correct. The allegation that the Enquiry Officer conducted a stage managed domestic enquiry in a most biased and prejudicial manner and against the principles of natural justice is not correct. The allegation that the domestic enquiry is vitiated because the Enquiry Officer went on overruling the genuine representations and objections made by the representative for the Petitioner is totally false. Thus Hon'ble Tribunal may be pleased to read the enquiry file as part and parcel of this counter. The allegation that the Enquiry Officer has not made efforts to call for the relevant material records which are vital and decide the root of the case when the representative for the Petitioner made representations to call for the original records, is not correct. This fact has been concocted to suit to the Petitioner's case. The allegation that the Enquiry Officer closed the enquiry without completing the examination of witnesses and ventured to give his findings against the principles of natural justice is not correct. In view of the allegations made by the Petitioner with regard to the domestic enquiry, this Hon'ble Tribunal may be pleased to decide the validity of the domestic enquiry before going into the merits of the case, and if by any reason this Hon'ble Tribunal comes to the conclusion that the domestic enquiry was not conducted as per principles of natural justice. The Respondent-management may be permitted to prove the charges before this Hon'ble Tribunal. The various allegations made by the Petitioner in paras 3, 4, 5 and 6 are improved version of the Petitioner other than what has actually happened and the actual evidence let in the domestic enquiry. It is true that the missing packet of Rs. 10,000.00 was found in the Recreation Club. Just because the Reserve Counter is in a separate building and the Recreation Club is in a separate building, the Petitioner cannot exonerate his responsibility of missing of the Rs. 10,000 notes bundle in the

Recreation Club. It may be noticed that the Petitioner herein Sri Anup Singh on 23-5-1983 when he was counting the cash, several times left the seat and has gone out and there are independent witnesses who have seen him outside the Reserve Counter and also there were witnesses who have seen him going towards the Recreation Club. Simply because the lost bundle was found at the Recreation Club will not exonerate this Petitioner from the misconduct. The allegation that although the said recovery was made neither from the possession of the petitioner or at his instance, the persons who bore grudge against the Petitioner being the fast worker depriving their vested interest of over time allowance etc., concocted a false story is not correct. The allegation that the Respondent-management foisted a false case attempting to misappropriate the Bank's amount against the Petitioner is totally false. The Respondent Management was constrained to initiate the disciplinary action and conduct the domestic enquiry against this Petitioner because of the incident occurred on 25-5-1983. The Petitioner being Award Staff, the Management followed the provisions of Sastry Award, Desai Award and Bipartite Settlement. Accordingly, in view of the misconduct, the Respondent Management suspended the employee on 25-5-1983 and issued a charge sheet on 29-7-1983. Some of the facts have been made with regard to the Recreation Club keys and duplicate keys only to protect the Petitioner's interest. The actual fact is that one of the duplicate keys is also in the custody of the Petitioner, who is having access to the Recreation Club at any time to enter into and the said duplicate key was received by this Petitioner only one day before the incident, i.e. on 24-5-1983. The allegation that there was no proof that the Management has given the cash to this Petitioner for counting is not correct. The mis-conduct has been completely proved, and that was the reason, the Respondent Management has taken action against the police party was conveniently sent back without this petitioner. The allegation that the Police party was conveniently sent back without handing over the case to them to trace-out the real culprit is not correct. In fact, the police people have come between 5.00 to 5.30 P.M. as cash was not tallied by that time and at the same time, the Chief Manager received the information one packet with value of Rs. 10,000.00 was located at the Recreation Club. That was the reason with an intention not to harass the employees, the management sent back the police people. That cannot be coloured to make the allegation that some third parties played tricks. Only to prejudice the case of the Respondent the Petitioner has chosen to make these allegations. The allegation that the police left before the money was recovered from the club boy at 6.30 P.M. is a distorted version. Only after the money was recovered from the Recreation Club, the police left. As the

misconduct clearly falls under 19.5 of the Bipartite Settlement, the Management has issued charge sheet. So far as the merits of the case is concerned, it has clearly discussed in the findings by Enquiry Officer in his findings basing upon the evidence. As such, all the allegations made by the petitioner are not correct, and they are not admitted by the Management and the Petitioner is put to strict proof of the same and the entire enquiry file may be read as part and parcel of this counter. The allegation that the exhibits were not produced in the enquiry is not correct. Whatever document that were necessary have been filed by the Management to mark them as exhibits. It is true that the disciplinary authority established the charge sheet and called for the explanation of the Petitioner. As the Management was not satisfied with the explanation given by the Petitioner, the domestic enquiry was conducted and the disciplinary authority after going through the findings of the Enquiry Officer, entire record of enquiry file and also the past record of the Petitioner, and after applying their mind, passed the order of dismissal on 4-8-1986. It is respectfully submitted that the Management after applying its mind and after going through the enquiry file, Enquiry Officer's findings and also the past record of the Petitioner, passed the order of dismissal. The allegation that the order of dismissal from service of the Petitioner by the Management from the Respondent Bank is most unjust, illegal and contrary to lay the facts of the case and one which is opposed to the principles of natural justice together with the provisions of Bipartite Settlement is not correct. It is submitted that no false case has been foisted by the Respondent Management against the Petitioner as alleged. If there was no incident on 25-5-1983, taking disciplinary action does not arise. It is respectfully submitted that the post of Cashier is a post in which confidence has to be reposed as it deals with the cash. The normal procedure in the Reserve Counter is that the Cashiers when they are counting the cash, they are not supposed to leave their seats and go out frequently. But in this case, the Petitioner Sri Anup Singh, several times left the seat on 25-5-1983 and has become responsible for the misconduct. There are no merits in the case of the petitioner. In view of the above mentioned facts, this Hon'ble Court may be pleased to dismiss the claim petition.

4. W.W1 was examined the Petitioner himself and marked Exs. W1 to W8 (Ex. W3 to W7 were marked by consent). M.W1 and M.W2 were examined for the Respondent-Bank and marked Exs. M1 to M9.

5. My learned predecessor passed preliminary order on 8-8-1991 holding that the domestic enquiry conducted by the Respondent-Management in this case is not vitiated for any reasons.

6. The point for adjudication is whether the action of the Management of State Bank of Hyderabad in dismissing from service Sri T. Anoop Singh, Clerk-cum-Cashier with effect from 4-8-1986 is justified?

7. It is contended on behalf of the Petitioner workman that the Petitioner was appointed as Peon in the Bank on 9-4-1972 and was promoted as Cashier-cum-Clerk with effect from 1-6-1976 and maintained a clean record. The allegation of the Petitioner workman is that on 25-5-1983 found shortage of Rs. 10,000.00 comprising of Rs. 100.00 denomination (one packet) at about 2 P.M. On the said date while tallying the books when the petitioner and some more cashiers, Head Cashiers and Chief Cashiers were working in the reserve counter of unfoundry Branch of the Bank and the said amount was alleged to be recovered from the Bank's recreation club from a cup-board by the Club-Boy.

8. On the other hand the contention of the Respondent Bank is that the Petitioner while he was working as Cashier-cum-Clerk at Gunfoundry Branch was posted at the Reserve Counter as an Asst. Cashier to count the cash. On 25th May 1983 the R.T.C. has remitted 11 packets of 100 rupee notes and 12 packets of 50 rupees notes. The packets which were remitted by R.T.C. was having specific seal of R.T.C. of that day. The Head Cashier, in normal course distributed the cash to the Assistant Cashier through the Senior Cashier and Mr. T. Anoop Singh, the petitioner was given 11 packets of 100 rupees and also 12 packets of 50 rupee notes, for counting. As the cash was not tallied by lunch and there was a shortage of Rs. 10,000.00 comprising of Rs. 100 denominations, the Officers concerned verified and tried to balance the cash and realised that there was shortage of Rs. 10,000, and the fact was brought to the notice of the Chief Manager of the Branch and took appropriate steps. The petitioner accounted only for 10 packets of 100 rupees notes in the Reserve Cash instead of 11 packets. In view of this misconduct, the Management suspended him from service on 27-5-1983 and issued a charge sheet on 29-7-1983. The Petitioner gave explanation to the charge sheet and not satisfied by the Management, ordered an Domestic enquiry.

9. The reply to the Memo under Ex. M8 the Petitioner mentioned that it is absolutely incorrect to state that 11 Packets of Rs. 100.00 denomination and 12 Packets of Rs. 50.00 denomination notes were only given to the petitioner and other denomination packets to other cashiers working in the Reserve Counter. Actually all the packets of different denominations were distributed to all the Cashiers work-

ing in the Reserve Counter. Sri Shaik Ali and Sri Wasay have stated that the packets of Rs. 100.00 and Rs. 50.00 denominations were given to the workmen is not correct. If a perusal is kindly be made on the records at the cash department on 25-5-1983, it can be easily proved that Sri Shaik Ali and Sri Wasay had given false statements.

10. A perusal of the domestic enquiry file and the domestic enquiry report and other material records would show that there was allegation of shortage of cash of Rs. 10,000.00 from the Heavy Cash Receipt Counter on 25-5-1983. As seen from records that according to the statement of P.W3, he is the first person to see the amount at 6.30 P.M. but the Police was sent back between 5.00 and 5.15 P.M. as per the version of the P.W4 Mr. K. V. Ranga Rao, Chief Cashier. P.W5 states that he was so happy that cash was found, and he does not remember clearly what happened immediately thereafter and also further stated that he came to know that Police were withdrawn as the money was found. Further P.W5 stated that he had not at all seen the amount nor he had to the so-called cup-board in the Recreation Club. He further stated that he has not even touched the packet.

11. A perusal of the record further shows that the alleged missing and recovery of the cash seems to be not materialised. As seen from the records, no where it is mentioned recovered cash produced or at least the slips of the bundle alleging belong to APSRTC are not produced before the Enquiry Officer at any point of time or before this Tribunal. The Management also not produced the register maintained for the cash slips pertaining to the date of alleged incident i.e. 25-5-1983 inspite of the repeated demands made by the Petitioner in the domestic enquiry nor they were produced before this Tribunal to prove that the entrustment of the amount alleged to be given to the Petitioner-workman on the said date. As seen from the records that cross examination of P.W1 and P.W4 differed for want of production of the said records. As seen from the documents the persons who are mostly involved in this incident like Sri Ch. Eshwar Rao who is stated to have been the immediate person who received the information of tracing the amount and another person Sri Appa Rao also not examined to show that he has counted the alleged bundle, pertaining to APSRTC No. 1. Hence I find that it is clear case that the Management has not able to establish the case that they entrusted the alleged particular packets of Rs. 100.00 and Rs. 50.00 denominations to the Petitioner-workman and they have not produced the any entrustment registers or any amount allegedly missing and recovered amount or its slips neither produced before the Enquiry Officer nor before this Tribunal to prove that the entrustment was properly made and the cash was missing and also recovered is not estab-

lished. In the domestic enquiry, certain witnesses were dropped when certain crucial documents were demanded by the Petitioner-Workman. The Enquiry officer has not properly appraise the evidence before him and not taken the fact of not producing the recovered amount of Rs. 10,000.00 packet or its bundle slips of the APSRTC bundle and registers maintained in the particular Cash Receipts counter on that day, he found the petitioner-workman guilty of the offence. As seen from the records, the only concocted story prepared by the Management is that the Petitioner is having duplicate key of the cup-board of the Recreation Club which is far away from the Reserve Counter of the Bank and simply found the money in the cup-board of the Recreation Club will not attribute any offence committed by the Petitioner-workman when the material available is otherwise shown. The inconsistent statement with each other before the Enquiry Officer and other statements and material documents before this Tribunal also give the inference that the amount allegedly missing and recovered from the cup-board is not at all proved. Actually it seems the Management failed to prove the actual missing and recovery made by their department to coverup their story, they made the petitioner scape goat for having duplicate key of the particular cup-board allegedly the cash was recovered. In any case the management failed to establish the case that the cash was actually missing and it was actually recovered. Hence I find that the Petitioner-workman cannot be made scape goat for the lapse of proving allegedly missing amount and recovery as stated by the Management. Hence I find that the Petitioner-Workman is not guilty of misconduct as enumerated in the dismissal order.

12. The Counsel for the Respondent-Management has cited a number of decisions. (1) S. S. Chawla Vs. M.D. Indian Airlines, 1990(I) ALT NRC 48, (2) Malla Reddy Vs. Southern Railways, 1962 (II) L.J. page 586 at 589, (3) Chandrama Tiwari Vs. Union of India, AIR 1988 S.C. page 117 para 9 of page 121. The above three decisions with regard to the validity of the domestic enquiry when the production of documents were rejected by the Enquiry Officer. On this point this Tribunal passed an order dt. 8-8-1991 holding that the domestic enquiry held not vitiated. Hence the relevancy at this stage of the above decision are not relevant. The other citation submitted by the counsel for the Management is STATE of A.P. vs. Srirama Rao, AIR 1963, SC 1723 para 7 page 1726, J.D.J. Vs. State Bank of India para 17 and 18 page 147 are not applicable although strict evidence act does not apply to the domestic enquiries but the crucial documents and crucial witnesses were dropped and not produced, the relevancy of the above judgements cannot be taken in this case.

13. Considering the facts and circumstances and the material placed before this Tribunal, I find that the Petitioner-Workman is not guilty of the misconduct alleged by the Management, and the order of the dismissal passed against the Petitioner workman is set aside. The Respondent-Management is directed to reinstate the Petitioner-workman into service w.e.f. 4-8-1986 with full back wages, and continuity of service and all other attendant benefits.

14. In the result, the action of the Management of State Bank of Hyderabad in dismissing from service Sri T. Anoop Singh, Clerk-cum-Cashier w.e.f. 4-8-1986 is not justified and the Respondent Management is directed to reinstate the Petitioner-workman into service w.e.f. 4-8-1986 with full back wages and all other attendant benefits.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the fourth day of June, 1993,

Y. VENKATACHALAM, Presiding Officer

Appendix of Evidence :

Witnesses Examined
for the Management :

M. M1—S. Antony Doss

M. W2—K. V. Ranga Rao

Witnesses Examined
for the Workman :

W. W1 T. Anoop Singh

Documents marked for the Management :

Ex. M1/30-3-84—Order dt. 30-3-84 of Disciplinary authority State Bank of Hyderabad Gunfoundry (Hyd.) appointing S. Antony Doss as enquiry officer to conduct enquiry against T. Anoop Singh.

Ex. M2/29-3-84—Photostat copy of the charge sheet dt. 29-3-1984 issued to T. Anoop Singh by the Disciplinary authority Chief Manager State Bank of Hyderabad, Hyderabad Gunfoundry.

Ex. M3/10-10-83—Photostat copy of the explanation dt. 10-10-83 of T. Anoop Singh to the Charge Sheet dt. 29-3-84 submitted to the Chief Manager, State Bank of Hyderabad Gunfoundry.

Ex. M4—Enquiry Proceedings.

Ex. M5—Notices issued for domestic enquiry (total 8).

Ex. M6—Exhibits marked during domestic enquiry (Total 13).

Ex. M7—Enquiry report.

Ex. M8/27-5-83—Photostat copy of the Suspension Order dt. 27-5-83 issued to T. Anoop Singh by the Chief Manager, State Bank of Hyderabad, Hyderabad.

Ex. M9/29-3-84—Letter dt. 29-3-84 of Disciplinary authority/Chief Manager, State Bank of Hyderabad to T. Anoop Singh with regard to appointment of S. Anthony Doss as Enquiry Officer (original of Ex. M2).

Documents marked for the Workmen :

Ex. W1/23-7-85—Letter dt. 23-7-85 from Defence Council N. Seetha Rama Rao to the Disciplinary Action Authority, Chief Manager, State Bank of Hyderabad Gunfoundry Hyderabad with regard to departmental enquiry against T. Anoop Singh, Cashier-cum-Clerk, Gunfoundry Branch.

Ex. W2/24-7-85—Letter dt. 24-7-85 from Chief Manager/Disciplinary Action Authority, State Bank of Hyderabad to the Enquiry Officer with regard to Departmental enquiry against T. Anoop Singh, Cashier-cum-Clerk, Gunfoundry Branch.

By consent

Ex. W3/2-6-80—Xerox copy of Disciplinary Proceedings.

Ex. W4/12-7-86—Xerox copy of explanation submitted by Sri T. Anoop Singh.

Ex. W5/4-8-80—Xerox copy of Disciplinary Proceedings.

Ex. W6/23-9-80—Xerox copy of Appeal against the decision of Disciplinary Authority.

Ex. W7/8-11-86—Xerox copy of Disciplinary Proceedings.

Ex. W8—Xerox copy of record of the proceedings held in the chamber of the Appeal authority, G.M. (Operation), S.B.H., Head Office (Operations).

नई दिल्ली, 28 जून, 1993

का.प्र. 1543 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में केन्द्रीय सरकार सेक्टर बैंक ऑफ इंडिया के प्रबंधन के संबंध नियोक्तों और उनके कर्मचारों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक समीक्षण, कानपुर के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 28-6-93 को प्राप्त हुआ था।

[संख्या एन-12012/126/89-डी-2 (ए)]

एम. के. जैन, डेस्क अधिकारी

New Delhi, 28 June, 1993

S.O. 1543 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workmen, which was received by the Central Government on 28-6-93.

[No. L-12012/126/89 D-IIA]

S. K. JAIN, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL CUM LABOUR COURT, PANDU
NAGAR, KANPUR

Industrial Dispute No. 66 of 1990

In the matter of dispute between

The Regional Manager

Central Bank of India

Gandhi Nagar Golghar, Gorakhpur.

and

Sri Ramendra Kumar alias Kamlesh Kumar

Mohalla Gulam Alipura

Kali Mandir ke pass

Bahraich City

Post/Distt. Bahraich.

AWARD

1. The Central Government, Ministry of Labour, vide its notification no. L-12012/126/89-D-2-A dated 15-2-90, has referred the following dispute for adjudication to this Tribunal—

Whether the Regional Manager, Central Bank of India, Gorakhpur, was justified in terminating the services of Sri Ramendra Prasad alias Kamlesh Kumar as Subordinate Staff of Bahraich Branch w.e.f. 17-1-86 in violation of section 25-G & H of the I.D. Act, 1947? If not, what relief the workman was entitled to?

2. The workman's case in short is that due to shortage of sub staff in the Bahraich Branch of the Bank, he was employed by the bank as sub staff at the said branch on 16-10-84. He worked upto 17-1-86, whereafter his services were terminated without any rhyme or reason. During the period 16-10-84 to 17-1-86, he had worked for 344 days. However, he was not paid for Sundays and Holidays. The workman contends that his services were terminated in violation of provisions of section 25F, 25H and 25G of the Act and paras 493, 495, 507, 522 & 524 of the modified Sastry Award. Besides in violation of the provisions of paras 20.7 & 20.8 of the First Bipartite settlement and Articles 14, 16 and 21 of the Constitution of India. He has, therefore, prayed for declaring the action of the management in terminating his services as unjustified and void and for his reinstatement with back wages and all consequential benefits.

3. The case is contested by the management. The management plead that the workman was engaged purely as a casual labour at Bahraich Branch of the bank on daily wages as per exigencies of the bank. During the period August 84 to January 1986, he had

worked for 289 days only as per details given in para 12 of the written statement. The statement would show that the workman never worked continuously for 240 days in 12 calendar months preceding his alleged termination of services. Since the workman was never engaged/appointed in bank's services against any permanent vacancy, no appointment letter nor any termination letter was issued to him. The present case does not amount to violation of the provisions of sections 250, 25H and 25F of the I.D. Act. Such a casual engagement does not create a right for permanent absorption in bank's service. In terms of Government directives all sub staff has to be recruited from amongst the candidates whose names are sponsored by the Employment Exchange and who fulfils norms of recruitment.

4. In support of their respective cases both sides have led oral as well as documentary evidence. Whereas the workman has examined himself, the management has examined Sri R. Krishnamurthy Asstt. Regional Manager, Lucknow.

5. The crucial point for determination in this case is whether or not the workman had worked for 240 days or not during the period of 12 months preceding the date of termination of his services. His relevant period for deciding this question is 17-1-85 to 16-1-1986.

6. In pursuance of courts' order dated 14-5-1991, management filed photostat copies of payment vouchers for the period 18-1-85 to 18-1-86 alongwith his statement of working days prepared on the basis of the said vouchers. In the said statement, the workman's working of 16-1-1985 is also noted. If this one day's working is excluded, the number of working days of the workman for the period 17-1-85 to 16-1-86 comes to 184 days. With his affidavit dt. 7-10-91 the management witness has also filed a statement of working days of the workman during the period 19-1-85 to 8-1-86. In the list of working days filed by the management witness, from the entry at serial no. 8, it appears that by means of voucher dated 5-6-85 workman was paid wages for two days i.e. for 3-6-85 and 4-6-85. In the previous list of 184 days of working, it appears from the entry at serial 43 that the workman was paid one days wages for 3-6-85 by means of voucher dated 3-6-85. Thus the working on 3-6-85 is noted at two places i.e. in both the list. Then from the entries appearing at serial nos. 15 and 16 of the list filed by the management witness it appears that the workman was paid wages twice for 10-11-85. Again from the entry at serial no. 21 of this very statement and the entry at serial no. 95 of the previous list it appears that the workman was paid twice for his working on 25-11-1985.

7. In the statement of working days filed by the management witness it appears that but for the above said facts the dates of working shown in it are not mentioned in the previous list/statement of working days of the workman from the statement it appears that wages were being paid to the workman at Rs. 8/- per day. Some of the entries show that by means of voucher amounts much less than Rs. 8/- were paid to the workman. I am therefore excluding while counting the number of working days of the workman such entries. From the statement the working days filed by the management witness it appears that the workmen had worked for 42 days in addition to 184 days worked out from the previous statement of working days. His total number of working days thus comes to 226 days.

8. It has been admitted by the management witness in cross examination that the workman was not paid for Sundays and Holidays. Now there are 52 Sundays besides public holidays in a year. Sri V.N. Sekhari, the auth. representative for the workman filed at the time of arguments a small calendar of the year 1985 of the Central Bank of India showing the list of holidays. Now if the proportionate number of sundays and holidays are included to the already worked out working days of the workman, the working days would become more than 240 days. This being so I hold that the workman had worked for more than 240 days during the period of 12 months preceding the date of termination of his services.

9. There is no allegations from the side of the management that at the time of termination of his services the workman was given one month's notice and was paid retrenchment compensation. The management witness has admitted in his cross examination that before the termination of his services no notice was given by the management to the workman. Thus at the time of termination of services of the workman the management failed to comply with the mandatory provisions of section 25F of the Act. Accordingly the order of termination is void abinitio.

10. The other point on which the order of termination has been assailed is that the management while terminating the services of the workman violated the provisions of section 25G of the Act. In this plea of the workman I do not find any force. In his cross examination the workman has admitted that he has not given the names of persons junior to him who have been made permanent in his claim statement, rejoinder or in the affidavit. He even could not give any reason for not mentioning their names in the claim statement, rejoinder and affidavit. For the first time in his cross examination, he named some persons. No reliance

can be placed on this statement of the workman. Therefore, it is held that the workman has failed to prove the violation of section 25G of the Act.

11. In view of the above findings it is held that the action of the management in terminating the services of the workman w.e.f. 17-1-86 was unjustified and illegal. Consequently the workman is held entitled to his reinstatement in service with full back wages and all consequential benefits.

12. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

नई दिल्ली, 25 जून, 1993

का.आ. 1544 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार फूड कॉर्पोरेशन ऑफ इंडिया के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, 1947 के पंचवट को प्रकाशित करती है जो केन्द्रीय सरकार को 22-6-93 को प्राप्त हुआ था।

[संख्या एल-42012/123/86-डी-II (बी)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 25th June 93

S.O. 1544 :—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of R.C.I. and their workmen, which was received by the Central Government on 22-6-93.

[No. L-420012/123/86 D-II (B)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,

CHANDIGARH.

Case No. I.D. 92/87

Vinod Kumar Vs. Food Corporation of India

For the workmen : Shri P.K. Singla

For the management : Shri R.S. Khosla

AWARD

Central Govt. vide gazette notification No. L-42012/123/86-D. II (B) dated 20th October 1987 issued U/S 10(1)(d) of the I.D. Act 1947 referred the following dispute to his Tribunal for adjudication :

“Whether the action of the management of Food Corporation of India represented through the Managing Director, Zonal Manager, Sr. Regional Manager and District Manager in not regularising the services of Shri Vinod Kumar, Casual Watchman is justified. If not, to what relief the workman is entitled to and from what date?”

2. Mr. P.K. Singla authorised representative of the petitioner has made statement that present case has been settled. The petitioner has been given fresh employment and workman does not want to persue with the present reference and no dispute award may be returned to the Ministry. In view of the statement made by his authorised representative P.K. Singla no dispute award is returned to the Ministry.

Chandigarh,

25-5-1993. ARVIND KUMAR, Presiding Officer

नई दिल्ली, 25 जून, 1993

का.प्र. 1545 :—औद्योगिक, विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार फूड कारपोरेशन आफ इंडिया के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-6-93 को प्राप्त हुआ था।

[संख्या एल-42012/194/86-डी-II (बी)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 25th June, 1993

S. O. 1545.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workmen, which was received by the Central Government on 22-6-93.

[No. L-42012/194/86-D-II(B)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,

CHANDIGARH

Case No. I.D. 56/89

Achra Singh Vs. Food Corporation of India

For the workman : Shri P.K. Singla

For the management : Shri N.K. Zakhmi

AWARD

Central Govt. vide Gazettee notification No. L-42012/194/8 -D. II.B/IV/(B) dated 6th October, 1988 issued U/S 10 (1) (d) of the I.D. Act 1947 referred the following dispute to this Tribunal for adjudication :

“Whether the action of the Management of Food Corporation of India represented the Sr. Regional Manager, Food Corporation of India, Chandigarh in reducing the rank from A.G. III (D) to the post of Watchman to Sri Achra Singh, is justified? If not, to what relief the workman is entitled?”

2. Mr. P.K. Singla authorised representative of the workman has made statement that he does not want to persue with the present reference as the dispute has been settled with the management and no dispute award may be returned to the Ministry. In view of the statement made by the authorised representative no dispute award is returned to the Ministry.

Chandigarh.

25-5-1993.

ARVIND KUMAR, Presiding Officer.

नई दिल्ली, 25 जून, 1993

का.प्र. 1546 :—औद्योगिक, विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार फूड कारपोरेशन आफ इंडिया के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-6-93 को प्राप्त हुआ था।

[संख्या एल-22012/412/90-आई आर (सी-II)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 25th June, 1993

S. O. 1546.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workmen, which was received by the Central Government on 22-6-93.

[No. L-22012/412/90-IR (C. II)]

Raja Lal, Desk Officer

ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING
OFFICER, CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
CHANDIGARH

Case No. I.D. 57/92

Ajaib Singh Vs. Food Corporation of India
For the workman : Shri P.K. Singla
For the management : Shri R.S. Khosla

AWARD

Central Govt. vide gazette notification No. L-22012/412/90-IR (C. II) dated 16th June 1992 issued U/S 10(1)(d) of the I.D. Act 1947 referred the following dispute to this Tribunal for adjudication :

“Whether the action of the Distt. Manager, Food Corporation of India Sangrur in terminating the services of Shri Ajaib Singh S/o Shri N. Naranjan Singh w.e.f. 10-11-88 is legal and justified? If not, to what relief the concerned workman is entitled and from what date?”

2. Mr. P.K. Singla authorised representative of the workman has made a Statement that he does not want to pursue with the present reference and a no dispute award may be returned to the Ministry. In view of the statement made by Mr. P. K. Singla authorised representative of the workman, no dispute award is returned to the Ministry.

Chandigarh.

25-5-1993.

ARVIND KUMAR, Presiding Officer

नई दिल्ली, 25 जून, 1993

का.प्र. 1547.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार फूड कारपोरेशन आफ इंडिया के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण खलीगढ़ के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 22-6-93 को प्राप्त हुआ था।

[संख्या एल-22012/362/एफ 90-आई आर (सी-II)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 25th June, 1993.

S. O. 1547.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Chandigarh as shown in the Annexure, in the

industrial dispute between the employees in relation to the management of F.C.I. and their workmen, which was received by the Central Government on 22-6-93.

[No. L-22012/362/F/90-IR (C-II)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING
OFFICER, CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
CHANDIGARH

Case No. I.D. 13/91

Jaswant Singh Vs. Food Corporation of India
For the workman : Shri P.K. Singla
For the management : Shri N.K. Zakhmi

AWARD

Central Govt. vide gazette notification No. L-22012 (362)/F/90-I.R. (C. II) dated 29th January 1991 issued U/S 10(1)(d) of the I.D. Act 1947 referred the following dispute to this Tribunal for adjudication :

“Whether the demand of F.C.I. Class IV Employees Union that the services of Sh. Jaswant Singh employed on casual basis be regularised and placed in the scale of F.C.I. is justified? If yes, to what relief the concerned workman is entitled?”

2. Mr. P.K. Singla authorised representative of the workman has made statement that he does not want to pursue with the present reference and a no dispute award may be returned to the Ministry. In view of the statement made by Mr. P.K. Singla authorised representative of the workman, no dispute award is returned to the Ministry.

Chandigarh

25-5-1993

ARVIND KUMAR, Presiding Officer

नई दिल्ली, 25 जून, 1993

का.प्र. 1548.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस सी सी एल. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 23-6-93 को प्राप्त हुआ था।

[संख्या एल-21 011/29/83-सी-III (बी)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 25th June, 1993

S.O. 1548.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Government Industrial Tribunal Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of S.C.C. Ltd. and their workmen, which was received by the Central Government on 23-6-93.

[No. L-21011/29/87-D III(B)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT :

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal.

Twentyninth Day of May Nineteen Hundred Ninety

Three

Industrial Dispute No. 13 of 1988

BETWEEN :

Singareni Collieries Automobile Workers Association, represented by its General Secretary Sri L. Mallaiiah.

..Petitioner

AND

The Management of Singareni Collieries Company Limited, Area-I, Ramagundam Division, represented by its General Manager.

..Respondent

APPEARANCES :

Sarvasri A. K. Jayaprakash Rao, P. Damodar Reddy, V. N. Goud and Ch. Laxminarayana, Advocate for the Petitioner-Workman.

Sri K. Srinivasa Murthy, Miss G. Sudha and Mrs. Mitra Das, Advocates for the Respondent—Management.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-21011/29/87-D. III(B) dt. 27-1-1988 referred the following dispute under Section 10(1)(d) & (2A) of the Industrial Disputes Act, 1947 between the employer in relation to the management of M/s. Singareni Collieries Company Limited, Area-I, Ramagundam Division and their workmen to this Tribunal for adjudication :

“Whether the action of the management of M/s. Singareni Collieries Co. Ltd., Area-I, Ramagundam Division, P.O. Godavarikhani Dist. Karimnagar (A.P.) in denying promotion to Category II to the 78 general mazdoors in Category I (as noted in Schedule 1)

of the Area Auto Workshop Godavarikhani are justified ? If not, to what relief the workmen concerned are entitled ?”

This reference was registered as Industrial Dispute No. 13 of 1988 and notices were issued to the parties.

2. The brief averments of the claim statement filed by the Petitioner-Union read as follows :

The Petitioner submits that the 78 general mazdoors who were shown in the annexure to the reference are the members of the Petitioner-Union and the Petitioner-Union has espoused the present dispute. The 78 general mazdoors referred in the annexure have put in the service of 3 years to 15 years and they are discharging the duties of helpers in Category II. Though the Respondent extracted higher work and all the general mazdoors referred in the present dispute, shouldered higher responsibilities, but the Respondent has paid the wages to the said mazdoors the rates fixed for the Category I. The action of the Respondent is therefore illegal, unjust, contrary to law and also contrary to the well established principle of equal pay for equal work. The 78 general mazdoors were attached to the various categories to work as helpers such as fitters, motor mechanics, electricians, painters and carpenters, have discharged their duties continuously for the last more than five years but the Respondent illegally denied the promotion to the said general mazdoors as Category II without any valid reasons. The Petitioner further submits that while promoting the general mazdoor to the Category II, no tests were conducted at any time but the promotions were given on the basis of the seniority alone taking into consideration the continuous period of three years as helpers. That at the time of joining the service, there were no rules with regard to the promotion policy nor any such rules were communicated to the workmen or to the Union. The Respondent, in order to accommodate their own persons, changed the service conditions without giving any notice as contemplated under Section 9A of the I.D. Act. The Petitioner submits that after the dispute was referred by the Central Government, on 27-1-1988 the Respondent issued a notice dt. 2-2-1988 which was affixed on the notice board, stating that the interviews will be conducted on 9-2-1988 and 10-2-1988. A representation was also submitted to the Respondent not to conduct any interviews as the dispute was already referred for adjudication. The Respondent has conducted the interviews and majority of the workman protested as the interviews were being conducted in the presence of the Police, as the said Police were nothing to do with the internal administration of the management. There was no congenial atmosphere for the general mazdoors to appear for the interviews. All the 78 general mazdoors are qualified for promotion in view of their experience by working as Helpers in Category-II. The Respondent is ignoring the seniority of the general mazdoors and the conducting of the interviews are only an empty formality as the Respondent has pre-determined to accommodate their own persons. The Petitioner therefore prays that this Hon'ble Court may be pleased to pass an award in favour of the Petitioner-Union holding that the 78 general mazdoors are entitled for promotion

to Category II from the day on which they have completed 3 years of continuous service as helpers and direct the Respondent to promote the 78 general mazdoors to the Category II and also hold that the general mazdoors are entitled to the difference of pay and allowances.

3. The brief averments of the counter filed by the Respondent-Management read as follows :

The Petitioner with an intention to create industrial unrest and also because of interse disputes between Union have chosen to make up this promotional issue which is not at all an issue. As such reference itself is bad in law. The allegation that 78 general mazdoors referred in the annexure to the reference are the members of the Union and have put in service of 3 to 15 years service and they are discharging their duties of helpers in Category II is not correct. It may be noticed 78 workmen are in Category I in permanent posts. General Mazdoors are not having any specific technical qualification or skill. Thus 78 workmen are attached to various tradesmen/mechanics to work as helpers to motor mechanics, painters, carpenters etc. is not correct. General Mazdoors are posted as helpers whenever required to the above mentioned skilled personnel. It may be noticed that in automobile section and in other sections when tradesmen are doing certain jobs they require assistance of unskilled and semi-skilled. Whenever they require semi-skilled nature helpers, they are sent for assistance. Similarly when unskilled job is there general mazdoor Category-I are sent. The allegation that respondent is extracting higher work and all the general mazdoors referred shouldered higher responsibilities and Respondent paid wages the rates fixed for Category-I is not correct. The allegation management is paying Category-I wage and extracting work of Category-II is illegal and at no point of time Respondent engaged lower category persons and extracted higher category work. To come to Category-II they have to attain skill and have aptitude, and whenever vacancy arises they will be given opportunity to appear for such skilled test so as they can be given promotion to higher category. Industrial Engineers made job study and based on the jobs which require helper in Category-II. Requirement of Helpers Category-II was assessed based on the activities requiring semi-skilled helpers and the fleet, strength, of the vehicles serviced by each auto workshop and on the basis of these studies 11 posts of Helpers have been identified for GDK Automobile workshop. The allegation Management has illegally denied the promotion to 78 general mazdoors as Category-II without any valid reasons though they are discharging higher category work is totally false. It is submitted the allegation that no tests were conducted at any time, but the promotion were given on the basis of seniority alone and also taking into consideration continuous period of 3 years as Helpers is not correct. The basic requisite qualification for a person to be entitled to apply for Category-II post is 3 years of service with higher category tradesmen. One should acquire skill of Category-II for applying Category-II post. The allegation management to accommodate their own persons changed service conditions without

giving any notice under Section 9-A is not correct. To get promotion in higher category a person should have seniority and depending on the seniority-merit with requisite educational qualification it will enable the employee to appear for test and whoever gets higher marks in the test they will be promoted. At present management could identify only 11 Category-II Helpers post in GDK area Automobile workshop. The Union cannot make a demand when there are no vacancies to 78 workmen in Category-II. If 78 workmen are promoted to Category-II though there are no vacancies it will create industrial unrest in various categories. That is the reason the very demand made by the Union without knowing the factual condition is bad in law. When the Management identified 11 vacancies it has issued a circular on 2-2-1988 stating that interviews will be held from 9th to 10th February, 1988. Inspite of explaining the Union has taken law into their own hands and started making protests. That was the reason management called Police to control violent acts and also in the interest of workmen who are discharging their duties in good faith. Mere seniority does not give additional qualification but seniority-merit is requisite qualification and promotion depends on the availability of vacancy. As there are no vacancies to promote and there is also no work load in any automobile work as demanded by the Union more particularly in GDK Automobile workshop. There is no work for 78 persons in Category-II. Circumventing the regular procedure they want 78 workmen to be promoted to Category-II and it is well settled, courts cannot interfere with regard to promotion nor can it give direction to give promotion to the management and when there is established procedure that when there are no vacancies the question of giving promotion does not arise. Under the guise of reference in the name of promotion petitioner is asking to promote 78 workmen. The petitioners i.e. 78 workmen are not entitled for any relief as prayed. Infact Union demand is to create 78 new posts in Category-II and to promote 78 workmen into them. This Hon'ble Tribunal may be pleased to reject the reference and dismiss the claim petition.

4. W.W1 to W.W6 were examined for the Petitioner-workmen and marked Exs. W1 to W16. Whereas M.W1 to M.W3 were examined for the Respondent Management and marked Exs. M1 to M12.

5. The point for adjudication is whether the Management of Singareni Collieries Company Limited, Ramagundam Division Godavarikhani in denying promotion to Category-II to the 78 general mazdoors in Category-I of the Area Auto Workshop Godavarikhani are justified.

6. At the very outset, there is no dispute with regard to the 78 general mazdoors are working in the Area Auto Workshop for the past 3 years to 15 years. The only dispute of the Petitioner-Union that the 78 general mazdoors referred in the reference are discharging the duties of helpers in Category-II for the past 3 to 15 years and that though the Respondent extracted higher work and all the general mazdoors referred in the present dispute, shouldered higher responsibilities. The contention of the Respondent-Management is that the allegation that the Respondent is extracting higher work and all the general

mazdoors referred shouldered higher responsibilities and respondent paid wages the rates fixed for Category-I is not correct. Further contended that at no point of time Respondent engaged lower category persons and extracted higher category work, and that to come to Category-II they have to attain skill and have aptitude and whenever vacancy arises they will be given opportunity to appear for such skilled test so as they can be given promotion to higher category.

7. W.W1 is one L. Malliah. He deposed that he is a Motor Mechanic in Singareni Collieries Company Limited. He does work in Area I Auto Workshop. He is the General Secretary of Singareni Collieries Company Automobile Workers Association. The list of persons in the Schedule to the reference are all members of their Union. The 78 workers mentioned in Schedule are in Category-I as general mazdoors. They were appointed as general mazdoors Category-I and they are working in Auto Workshop. The Company is taking work of Category-II persons from them. These persons have experience of 5 years to 15 years. Since 5 years all these persons are doing work of Category-II though they are still shown in Category-I in records. All these persons work as Fitter Helper, Electrical Helper and Motor Mechanic Helpers. After the I.D. is referred to this Tribunal and after Management and Union received notices in this dispute they put up a notice to the effect that they are conducting test and interviews. Now he sees the copy of the notice and find that on 2-2-1988 Notice was put up to the effect that interviews will be held on 9-2-1988 and 10-2-1988. His earlier statement that it is subsequent to their Union receiving Notice in I.D. is false or incorrect. Some persons were interviewed but till today 17-10-1988 none of the persons interviewed have been granted to Category-II helpers grade. The interviews were conducted with Police handobust. They claim promotions for all the 78 workers in the schedule as they are actually doing work of category II helpers. Ex W1 is the views of Union submitted to the Assistant Commissioner of Labour (Central), Hyderabad. Ex W2 is office order of Singareni Collieries Company dt. 23-6-1984. Ex. W3 is minutes of discussions between Union and Management representatives on 14th, 15th and 16th July 1983. Ex. W4 is proposals dt. 14-2-1983 submitted by Chief Personnel Manager on this promotion issue. Ex. W5 is office order dt. 25-8-1982 under which 6 persons were promoted from Category-II to Category-IV. Ex. W6 is office order dt. 21-6-1982 in Central Auto Workshop under which 6 Category-I general mazdoors were promoted as Helpers Category-II. Ex. W7 is Memorandum of Settlement dt. 4-2-1980. In this para 2 deals with "provision of helpers". They have sent copies of Ex. W1 to W7 to Assistant Commissioner of Labour, Management and to the Personnel Officer. They got them five copies of each document. They have prayed for grant of difference of pay and allowances as they were actually doing Category-II work.

8. W.W2 is one U. Anjaiah. He deposed that he is working as General Mazdoor Category-I in Auto Workshop. He is worker mentioned at Serial No. 19 in the Schedule to reference. On 11-6-1980 he joined service as Category-I General Mazdoor in

Auto Workshop. He is actually doing work at Category-II helper from 1982. They do work of dismantling gear boxes, dismantling and mounting of leaf springs of vehicles. They also do work of cleaning engine parts for engines which are dismantled and keep them ready for use by mechanic. They also do work of cleaning engine oil. They also pour engine oil in the vehicles. They also do work of topping up oil in differential, gear box and engine. They also do work of greasing the vehicles. They also work and clean the lorries. As Category-I worker one has only to do manual work of carrying parts and articles to help mechanic. Their leader gave representations on their behalf for promoting as Category-II helpers.

9. W.W3 is one Md. Osman Khan. He deposed that he is the worker mentioned at Serial No. 1 in the schedule to the reference in this I.D. He joined the service of Singareni Collieries Company in 1971 as Category-I helper in Auto Workshop. Though he is Category-I general mazdoor he is doing actually work of Category-II helper since five years. They do work of removing tyres and fixing tyres. They also handover tools to mechanics. They also take tyres to replace punctured tyres of different vehicles. They dismantle gear boxes and after cleaning they refix them. Though we are shown as Category-I workers the Management is actually extracting work that has to be done by Category-II Helpers. As Category-I they have only to help mechanics by handing over the spanners etc. to Mechanics. Though they made representations to grant promotion or give allowances for their doing work of Category-II there was no response from Management. Hence they set up their leader to make demands on their behalf. Though they raised this dispute Management has not given them any relief or promotions.

10. W.W4 is one R. Narsimha Raju. He deposed that he joined as General Mazdoor in Auto garage in 1981. He worked in Engine overhauling section. He is a Category I General mazdoor. Though they are Category I mazdoors they are actually extracting from them work that is done by Category II mazdoors. From Category I promotion to Category II is given as per seniority. He does work of Engine overhauling. He does gear box assembling work. He does the work of overhauling differential. He also does work of front axles of vehicles. He also repair Jack pumps. He also does work of steering box. They repair water pumps also. The general mazdoor category I only hands over tools and they help people in doing mechanical work. He does mostly manual work. From 1981 he started working with mechanics. Since 1983 he is doing the above mentioned works independently. Before he joined S.C. Company. Auto Garage he worked as Helper in private Autogarage for wages. He was not a raw hand when he joined S.C. Company workshop Auto Garage.

11. W.W5 is one N. Bhoomiah. He deposed that he joined the Singareni Collieries Company in 1974. He appeared for the Class and failed. Ex. W8 is his appointment order. He joined as general mazdoor in CSR Ex. W9 is his confirmation order in 1976. In 1979 under Ex. W10 he was transferred from CSP

to Auto Garage. He knows U. Anjaiah (Sl. No. 19) in this I.D. Schedule. Ex. W11 is his appointment order. He was confirmed under Ex. W12. He worked in Diesel Section of Auto Workshop. He does the following work. He does servicing of vehicles. He washes the vehicles, doing oiling and doing greasing of vehicles. He removes the leaf springs and again reassemble them. This is actually work that has to be done by Category II people. From the time he came to Auto garage, he has been doing only the work of category II helper. He is paid wages as Category I general mazdoor. In Servicing Section general mazdoor Category I they have to help mechanics by handing over tools and spanners. Though they are category I mazdoor they are extracting work of Category II mazdoors. Earlier Management was giving promotions on basis of seniority. As they were not given promotions as per seniority, they raised this I.D.

12. W.W.6 is one E. Chandraiah. He deposed that he joined Auto garage 10 years ago. He does work in tyres section. He is not educated. He does work of removing tyres and refixing tyres on rims. They also remove punctured tubes and replace repaired tubes in their place. General Mazdoor Category I only hands over tools and raises jocking. The work he does is work of Category II.

13. M.W.1 is one C. Chandra Mohan Rao. He deposed that he is working as a Divisional Engineer in Singareni Collieries in Ramagundam Area since the year 1974. He knows Auto work run at Godavarikhani. Categories I, IV, V and VI are working in the Auto Workshop at Godavarikhani. Around 80 people are working in Category I. He is incharge of Auto workshop for four years from January 1984 to June 1988. Basically Category I employees are unskilled workmen and they assist different category mechanics. Category IV, V and VI are skilled technicians and Category IV employees work like minor repairs. When Category V and VI attend to medium and major repairs. By working for some years, Category I employees cannot do the work of Category IV, and VI employees. Technical qualification i.e. IV qualification is fixed in Category IV, V and VI employees. After ITI qualification they have to apprentices. They have to interview. Thereafter they are selected. When he was there, there were no Category II posts in Auto workshop. To his knowledge, there is no rule that Category I employees is entitled for promotion to Category II, after working for three years. When the low category workman works in high category, he will be paid acting allowance. It is not true to suggest that he was extracting the work of Category II employees, from the Category I employees. They have included Engineering development which makes work study and finds out work load and man power required in various categories. There are nine Auto workshops in Singareni Collieries. There are nine Auto workshops in Singareni Collieries. Ex. M2 dt. 28-9-1987 is the report given by Industrial Engineering Development identify in the vacancies in auto workshop of the company. As per M1 and M2 there are only 11 vacancies of Category II vacancies to be filled.

14. M.W2 is one P. Chandrakant Sarma. He deposed that he has been working as Additional Chief Industrial Engineer in the Respondent Company

since June 1990. Prior to that he worked as Deputy Chief Engineer in the Respondent Company from 1982 to 1990. The Respondent Company is having its having Industrial Engineering Department in it for assessing the manpower, material, machinery and other inputs. The duties of the Deputy Industrial Engineer are to assist the General Manager in manpower planning, incentive schemes, productivity improvement programmes, cost reduction measure etc. There are three workshops in Godavari Khani. He has carried out manpower assessment in the area of Godavari Khani every year during the period he worked as Deputy Chief Industrial Engineer. Category I covers unskilled workmen only. The unskilled workmen in Category I are called as General Mazdoors in Singareni Collieries Company. For appointment in Cat. I no education qualification is required nor any experience is required. Normally workmen under Cat. I will be assisting in various jobs including cleaning, sweeping under the supervision of a Supervisor. If they are required, the Cat. I workmen will be called to the shop floor also where some unskilled jobs are there. Category II workmen are semi-skilled workmen. There are 11 posts only in Category II in the Auto workshop at Godavari Khani. The details of workmen in Cat. II is shown in Ex. M2, in the report of the Chief Industrial Engineer and it was approved by the Management. Ex. M2 is the photostat copy of the said report. He was associated with the preparation of Ex. M2 and he was a party to it and he signed it. There is a promotional channel from Cat. I to Cat. II. If an employee in Cat. I has got experience of three years in the relevant trade, he is eligible for promotion to Cat. II. It is not necessary that all the candidates working in Cat. I should be promoted first to Cat. II and thereafter to Cat. III and IV one after another Promotion channels are different from trade to trade and they are not uniform for all the trades. Depending upon the trade the workman working in Cat. I can be promoted directly to Cat. II or Cat. IV also. It is not correct to state that all the 78 persons involved in this I.D. ought to have been promoted to Cat. II after gaining experience of five years in Cat. I.

15. M.W3 is one Balbir Singh. He deposed that he has been working as Dy. Chief Personnel Manager in the Respondent Company at Godavari Khani since 3 years. He was appointed in the Respondent Company about 34 years back and worked in various capacities. The Respondent Company was having 9 categories of daily rated workman prior to Central Wage Board for Coal Industry and thereafter the 9 categories of daily rated workmen are made into 6 categories. The Central Wage Board for coal industry gave the job description for all the 6 categories of daily rated workmen. Ex. M4 is the extract of the job description of Categories I and II of the daily rated workmen. Ex. M4 is extracted from the book of Central Wage Board.

16. As seen from the evidence of W.W1 to W.W6 the Petitioner-Workmen have been discharging the duties of a Category II persons and all these persons work as Fitter Helpers, Electrical Helpers and Motor Mechanic helpers i.e. dismantling and removing of gear box, and reassembling it, removing of tyres from the vehicle and fixing it, changing of engine oil, clean-

ing of vehicles, repair of water pump, work of overhauling differential, engine overhauling, replacement of punctured tubes to different vehicles. Actually the work of Category I workmen in the Auto workshop is to help the Tradesmen and Technical workers. As Category I workmen one has only to do manual work of carrying parts and articles to help Mechanic, electrician etc. I find that the Category I workmen are doing the work of Category II as explained above. It is also seen that some general mazdoors who came into Auto Workshops along with these mazdoors got promoted as drivers and some got promoted as they acquired particular tradesmen qualification. As per Exs. W4 initially the helpers started as mazdoors in Category I and they are placed in Category II after acquiring some skill, in accordance with job description of "Helper" in the Wage Board, mazdoors will become entitled to Category II, on acquiring some degree of skill by working with the Tradesmen. Ex. W15 shows the general mazdoor Category I have been promoted to work as Fitter Helper Category II. It is not mentioned whether the above general mazdoor were taken test and interviewed. As rightly contended by the Petitioner that there was no test conducted and interview was held at the time of promoting the concerned workmen. The Petitioner-workmen contended that while promoting the general mazdoors to the category II, no tests were conducted at any time and that the promotions were given on the basis of the seniority alone taking into consideration the continuous period of three years as Helpers. After the dispute was raised, the Management conducted tests and interviews held for promotion to Category II posts. Some of the Petitioner-workman appeared for the test and interview but they were not selected by the Management and none of them were given Category II posts. It is clearly seen and find that the conducting of test and interviews by the Management after the dispute raised, is not justified and it is against the rules. It is further contended by the Petitioner-workman that at the time of joining the service, there were no rules with regard to the pro-

motion policy nor any such rules were communicated to the workman or to the Union. It is further the case of the workmen that under Ex. W6 promotions were given without conducting any tests or interviews and it was only on the basis of seniority. Similarly Exs. W2 and W5 would also show that people were promoted and none of these documents indicate that promotions were given automatically on the basis of seniority and they also do not mention whether tests and interviews were conducted or not. The promotion from Category I to Category II should be given after three years. There are people stagnating from 5 years to 18 years in the same Category I though they were actually discharging duties of Category II helpers. Even the evidence of M.W2, re stated that if an employee in Category I has got experience of three years in the relevant trade, he is eligible for promotion to Category II posts. So in view of the above facts and circumstances, I find that the 78 workmen mentioned in the reference are eligible for promotion to Category II posts in the Area Auto Workshop, Godavarikhani, without conducting tests and interviews.

17. In the result, the action of the Management of M/s. Singareni Collieries Company Limited, Area-I, Ramagundam Division, PO Godavarikhani District Karimnagar (A.P.) in denying promotion to Category II to the 78 general mazdoors in Category I of the Area Auto Workshop, Godavarikhani are not justified. The workmen concerned are eligible for promotion to Category II posts, without conducting any tests or interviews.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 29th day of May, 1993.

Y. VENKATACHALAM, Industrial Tribunal-I

Appendix of Evidence

Witnesses Examined for Workmen :

- W. W1—L. Mallaiah
- W. W2—U. Anjaiah
- W. W3—Md. Osman Khan
- W. W4—P. Narasimha Raju
- W. W5—N. Bhoomaiah
- W. W6—Chandraiah

Documents marked for the Workmen :

- Ex. W1/30-9-87—Views of the Union dt. 30-9-87 to the Asstt. Labour Commissioner (C), Hyderguda, Hyderabad.

Witnesses Examined for Management :

- M. W1—C. Chandra Mohan Rao
- M. W2—P. Chandrakant Sarma
- M. W3—Balbir Singh

- Ex. W2/23-6-84—Photostant copy of the Order dt. 23-6-84 issued to 13 Cat. I Mazdoors by the Executive Director, S.C. Co. Ltd., Kothagudem promoting them as Helpers in Cat. II with effect from 1-3-84.

- Ex. W3/25-2-83—Photostat copy of the Minutes of discussions held at Kothagudem, on 14th, 15th and 16th July, 1983, on strike notice dt. 25-2-1983 issued by the Singareni Collieries Engineering Workers' Union.
- Ex. W4/14-2-83—Photostat copy of the proposals dt. 14-2-83 from the Management.
- Ex. W5/25-8-82—Photostat copy of the Office Order dt. 25-8-82 issued to R. Satyanarayana and 5 others by the management promoting them as Tyndals.
- Ex. W6/21-8-82—Photostat copy of the Office Order dt. 21-8-82 issued to 6 mazdoors Cat. I by the Management, S.C. Co. Ltd., Kothagudem promoting them as helpers in Cat. II.
- Ex. W7/4-2-80—Photostat copy of the Settlement at U/s. 12(3) of I.D. Act, 1947 during the conciliation proceedings held by the Assistant Labour Commissioner (C), Hyderabad on 4-2-1980 in the Industrial Dispute between the Management of Singareni Collieries Company Limited and the Engineering Workers' Union.
- Ex. W8/18/19-8-74—Photostat copy of the Temporary appointment order dt. 18/19-8-1974 issued to N. Bhoomaiah and 7 others by Jt. C.M.E., R.G.I. S.C. Co. Ltd.
- Ex. W9/9-9-76—Photostat copy of the confirmation Order dt. 9-9-76 issued to N. Bhoomaiah by D.S. R.G.I. S.C. Co. Ltd., Godavarikhani.
- Ex. W10/16-7-79—Photostat copy of the Transfer Order dt. 16-7-79 issued to N. Boomaiah and 5 others by the Executive Engineer, C.S. Plant, Godavarikhani.
- Ex. W11/10-6-80—Photostat copy of the appointment order dt. 10-6-80 issued to U. Anjaiah and 10 others by the D.S. R.G.I. Godavarikhani.
- Ex. W12/12/15-7-81—Photostat copy of the confirmation order dt. 12/15-7-81 issued to U. Anjaiah and 10 others by D.S.R.G.I., Godavarikhani.
- Ex. W13/26-12-83—Lr. No. GDK/5A/83/02 A/6006/Dt. 26-12-83 issued by Dy. C.M.E. to Sri V. Murali and others with regard to promotion to work as Fitter Helper Category II w.e.f. 1-12-83.
- Ex. W14/22-4-91—Photostat copy of the Office Order issued by the Chief G.M. BPA(P) S.C. Co. Ltd., with regard to Sri Ravalli Posham and others promoted as helpers in Cat. II.
- Ex. W15/21-12-83—Photostat copy of the Office order issued by the Addl. C.M. RG.II, S.C. Co. Ltd., with regard to K. Laxmi Narayana and others promoted to work as Fitter helpers, Category II.
- Ex. W16/24-9-84—Photostat copy of the Office order issued by the Addl. Chief Mining Engineer, Ramagundam Division to Sri T. Prakash Rao and others promoted as EP helpers/Greaser in Group 'E' wages.

Documents marked for the Management :

- Ex. M1/14-2-83—Photostat copy of the Circular dt. 14-2-83 issued by Dy. C.P.M. (IR) S.C. Co. Ltd., with regard to Helpers to Tradesmen (Fitters and Electricians).
- Ex. M2/28-9-87—Photostat copy of the report dt. 28-9-87.
- Ex. M3/2-2-88—Photostat copy of the Notice dt. 2-2-88 in Telugu with regard to fixing the Trade tests and interviews to be held on 9th and 10th Feb. 1988.
- Ex. M4—Extract from Recommendations of Central Wage Board for the Coal industry.
- Ex. M5/28-9-87—Copy of the letter with a report submitted by C.I.e. to the Director (P) with regard to Helpers for Automobile workshops.
- Ex. M6/2-6-87—Copy of the minutes of the Joint Committee meeting in the chambers of Chairman and Managing Director at Kothagudem.
- Ex. M7/5-8-87—Copy of the letter issued by the Chairman and Managing Director to C.I.e. with regard to promotion of helpers in Automobile Section of workshops.
- Ex. M8/28-9-87—Worksheet dt. 28-9-87 prepared by the Management with regard to requirement of Cat. II helpers in Auto workshop.
- Ex. M9—Work sheet prepared by the Management with regard to activities needing Category II helpers.
- Ex. M10/13-9-87—Copy of the letter with the list of vehicles of S.C. Co. Ltd., Godavarikhani maintained by the auto workshop submitted by the Sr. T.E. (Mtce. Mgt. Group) RG to the Dy. C.I.E. (Hy.) Kothagudem.
- Ex. M11/Dt. Nil—Statement prepared by the Respondent/Management with regard to requirement of helpers for Central Auto Workshop.
- Ex. M12/19-11-87—Copy of letter addressed by the C.P.O., S.C. Co. Ltd., to the G.M., K.G.M. R.K.P., RG. I and Dy. C.E. Main workshop, KGM with regard to helpers for Automobile Section.

नई दिल्ली, 25 जून, 1993

का.प्र. 1549:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस०सी०सी०एल० के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचसट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-6-93 को प्राप्त हुआ था।

[संख्या एल-22012/92/88-डी-IV (सी)]

राजालाल, डेस्क अधिकारी

New Delhi, the 25th June, 1993

S.O. 1549.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Government Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of S.C.C. Ltd. and their workmen, which was received by the Central Government on 23-6-93.

[No. L-22012/92/88 D IV (B)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT :

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal-I.

EIGHTH DAY OF JUNE NINETEEN HUNDRED NINETY THREE

Industrial Dispute No. 7 of 1989

BETWEEN :

N. Ramadas, S/o Veerappa,
H. No. 2057, Tilak Nagar,
5th Incline Area, Godavarikhani.

..Petitioner

AND

The Management of Singareni Collieries Company Limited by its General Manager, Area-I, Ramagundam Division, Godavari-khani.

..Respondent

APPEARANCES :

M/s. G. Bikshapathi, G. Vidya Sagar, V. Vishwanathan M. Vinesh Raj, K.V.V. Bhaskar & C. Amar, Advocates for the Petitioner.

Sri K. Srinivasa Murthy & Miss G. Sudha, Advocates for the Respondent.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-22012/92/88-D. IVB dt. 16-12-1988 referred the following dispute under Section 10(1)(d) & (2A) of the Industrial Disputes Act, 1947 between the employers in relation to the Management of Sin-

gareni Collieries Company Limited, Area-I, Ramagundam Division and their workmen to this Tribunal for adjudication :

"Whether the action of the management of M/s. Singareni Collieries Co. Ltd., Area-I, Ramagundam Division, P.O. Godavarikhani, Distt. Karimnagar (AP) in dismissing Sri N. Ramdass, Compositor from service with effect from 30-11-1986, is justified ?

If not, to what relief the workman concerned is entitled ?"

This reference is registered as Industrial Dispute No. 7 of 1989 and notices were issued to the both the parties.

2. The brief contents of the claim statement filed by the Petitioner-workman read as follows :

The Petitioner submits that after joining the service, he was issued with a family Attendance Book which enables the Petitioner and his family members to avail the medical treatment at the hospitals maintained by the Singareni Collieries Company Limited. After receiving the Book, there was no occasion for the Petitioner to utilise the same. Further, it is submitted that the said book was misplaced and the Petitioner did not even get a duplicate book, he did not make use of the Book at any time and there was no occasion for its use even by the family members. The Petitioner was asked to submit the details of the family members which he complied with on 3-5-1985. Within a few days, the Petitioner was served with charge sheet dt. 18-6-1985 alleging that he got admitted one Sri Venkatesham on 30-3-1985 in the main hospital for treatment as out-patient falsely introducing him as Father of the Petitioner, though the father of the Petitioner expired long back i.e. on 5-10-1982. The Petitioner submitted an explanation on 20-6-1985, denying the charges and specifically putting forth the contention that the said Family Card was never utilised by the Petitioner or by his family members. In spite of his explanation, the authorities proceeded with the enquiry. Since he was called for the enquiry, he attended the same. During the enquiry, the Enquiry Officer advised the Petitioner to give a statement expressing the willingness to re-imburse the treatment charges of Venkatesham, so that the enquiry could be dropped and accordingly the Enquiry Officer recorded the statement to that effect and took the signature of the Petitioner. However, when the Petitioner was waiting for an order reinstating him in service but to this great surprise, he was dismissed from service by the General Manager by Proc. dt. 28-11-1986 w.e.f. 30-11-1986. Though the Petitioner filed mercy petition, there was no response. Thereafter the Petitioner filed W.P. No. 4037 of 1987 challenging the order of the dismissal. Finally Writ Petition was disposed of 11-3-1988 with a direction to raise an I.D. Other grounds are (a) The charge sheet was issued by the Press Officer, who is not competent under the Standing Orders. (b) The enquiry was conducted in an illegal and unfair manner. No documents were produced in the enquiry nor any relevant

witnesses were examined in the enquiry. Apart from issuing the charge sheet, the Press Officer also figures as a Witness. (c) The enquiry is also vitiated on yet another ground that the Officer issued the charge sheet cannot be a witness to the enquiry. (d) There is no evidence in this enquiry that either the Petitioner or his relation admitted the said Venkatesham in Hospital. The details of said person are not known until the charge sheet was issued to him. Hence the Petitioner is not to be blamed for a fraud played by unconnected outsider. (e) It is highly improbable that the Petitioner working at Godavarikhani could have admitted another person by name Venkatesham as his father in the main hospital at Kothagudem. (f) The reference to the past record is only a mere surmise and had the Respondent really referred the past record of the Petitioner, it would have made clear that he was maintaining clear record throughout. (g) No misconduct under Standing Order No. 16 (2) can be co-related to the issues under the charge sheet. The charge itself is vague and unintelligible. (h) In any event, the punishment of dismissal is not only unwarranted under the circumstances of the case but even otherwise the punishment is shockingly disproportionate to the gravity of the misconduct, if any, alleged against the Petitioner. The punishment of dismissal is highly arbitrary and wholly unjustified. The Petitioner submits that he was illegally dismissed from service w.e.f. 30-11-1986 and he could not secure any employment. It is prayed that the Hon'ble Court may be pleased to set aside the order of dismissal passed by the Respondent in proceedings dt. 28-11-86 dismissing the petitioner from service with effect from 30-11-1986 and direct the Respondent to reinstate the Petitioner into service with full back wages and other attendant benefits.

3. The brief contents of the counter filed by the Respondent-Management read as follows :

Sri N. Ramdas, the workman in dispute, was appointed as Compositor on 8-12-1975 to work at Respondent-Company's Printing Press at Kothagudem. He was promoted as Assistant Foreman-cum-Compositor and transferred to S.C. Printing Press, Godavarikhani, in 1978. Family Medical Attendance Book contains the particulars of the family members of the employee, the relationship between the employer and other family members who are eligible for medical services freely, their ages, marks of identification, sensitiveness to drugs and from third page onwards the particulars of treatment given to the patients (Family members). The Family Medical Attendance Book was issued to Sri N. Ramdas at Kothagudem Office. All particulars have been furnished by the Petitioner. It may be noticed the Petitioner has misused the Medical Benefit and got treated a third party, by name, Sri Venkatesham, in place of his father by impersonation. As this is a gross misconduct the management issued a charge sheet on 18-6-1985 and the Petitioner submitted his explanation on 20-6-1985. As the Management was not satisfied with the explanation given by the workman appointed Sri V. R. Gopal Rao as Enquiry Officer to conduct the domestic enquiry. The Petitioner has fully participated in the enquiry. The procedure in vogue in the Departments/Mines is that Departmental Head, who

issued the charge sheet will intimate that there will be an enquiry held and about the place and time and all the papers will be forwarded to the Enquiry Officer who will be conducting the enquiry. The Enquiry Officer is appointed by the General Manager and was not appointed by the Press Officer. It is true that the Press Officer issued the charge sheet. There is no bar under law for a person to issue a charge sheet and to be a witness. It may be noticed the Petitioner fully participated in the domestic enquiry and cross-examined the witness. The Petitioner examined himself as witness in the domestic enquiry and he was cross-examined. The allegation that the Petitioner was waiting for an order reinstating him does not arise as long with the charge sheet he was not suspended at all. The Enquiry Officer forwarded the enquiry proceedings and his findings to the General Manager and the General Manager applied his mind and issued the dismissed order dt. 28-11-1986 dismissing the Petitioner w.e.f. 30-11-1986. It is submitted the Petitioner has submitted his mercy petition and also filed a Writ Petition No. 4037/1987 challenging the order of dismissal. The Writ Petition was dismissed on the ground that when there is an alternative remedy, the Petitioner has to raise an Industrial Dispute. It is submitted the Press Officer is competent to issue the charge sheet and he cannot be called as incompetent officer understanding orders. The allegation that no documents were produced is not correct. It may be noticed that this petitioner admitted his guilt in the enquiry. The allegation that an Officer who issued charge sheet cannot be a witness is not correct. The allegation that there was no evidence in the enquiry that either the Petitioner or his relation admitted the said Venkatesham in Hospital and the details of the said person are not known to him until the charge sheet was issued to him and that he is not to be blamed for a fraud played by unconnected outsider and further the enquiry is bad for not giving him a copy of enquiry report, etc. is not correct. For the allegation that fraud was played by unconnected outsider, the onus is on the Petitioner to prove the fraud was played by an outsider when it was for him to discharge during the domestic enquiry. There is no such rule that a man who is having a past record clean will not do any mistake at all. The Petitioner is put to strict proof that the dismissal order passed by the officers concerned have not applied their mind. The allegation that no misconduct under Standing Order 16(2) can be correlated to the issues under the charge sheet is not correct. The allegation that the punishment of dismissal is unwarranted under the circumstances of the case but even otherwise the punishment is shockingly disproportionate to the gravity of the misconduct, if any, is not correct and the Petitioner is put to strict proof of the same. No employee is permitted to misuse any welfare measure provided to them. If outsiders are brought to the hospitals by the employees under the guise of their family members and they are treated basing upon the medical attendance book, that will increase the burden on hospitals as well as in expenditure. No workman or official are permitted to misuse the official position. Once confidence is lost it is practically difficult for any management to take them on

job and all the benefits which are given incidental to the job cannot be permitted to be misused. This Hon'ble Court may be pleased to dismiss the claim petition and the petitioner is not entitled for any relief prayed, that is reinstatement from 30-11-1986 into service with full backwages and other attendant benefits as prayed for.

4. No oral or documents evidence was adduced by the Petitioner-workman. M.W1 was examined on behalf of the Respondent-Management and Exs. M1 to M11 were marked on their behalf.

5. On preliminary issue this Tribunal passed an Order on 3-4-1993 holding that the domestic enquiry was held properly and it is not vitiated at all.

6. The point for adjudication is whether the action of the Management in dismissing Sri N. Ramdas Compositor from services with effect from 30-11-1986 is justified ?

7. At the very outset I would like to mention that there is no dispute that the Petitioner-workman joined the service as Compositor on 8-12-1975 in the Respondent Company's Printing Press at Kothagudem and later he was promoted as Assistant Foreman-cum-Compositor and transferred to S.C. Printing Press, Godavarikhani in 1978. There is also no dispute that the Petitioner-workman was supplied with a Family Medical Attendance Book for the purpose of providing free medical service to the family members of the employee freely. The Petitioner-workman was issued with a charge sheet dt. 18-6-1985 for the misconduct under Company's Standing Order 15(2) for admitting one Sri Venkatesham on 30-3-1985 in the Main Hospital, Kothagudem for treatment as an Out-patient falsely introducing Sri Venkatesham as his father. Though his father Sri N. Veerappa expired on 5-10-1982.

8. As seen from the material documents placed before me and the enquiry proceedings and enquiry report, I find that the Petitioner-workman committed the offence as enumerated in the Standing Order 16(2) of the Company's Standing Order. A perusal of the enquiry proceedings, the Petitioner-workman categorically admitted that he lost his Family Attendance Book and he is prepared to pay the charges towards the medicines and maintenance etc. and that may be recovered from his salary and he further accepted that his second wife Shakuntala has taken the Book and admitted one Sri Venkatesham on humanitarian grounds without the knowledge of the Petitioner-workman. In any case the Petitioner accepted his misconduct and agreed to reimburse the medical expenses incurred by the Company due to his mistake. Hence it can safely be said that the Enquiry Officer rightly found the Petitioner-workman guilty of the misconduct.

9. Under the circumstances, the question now arises with the interference of this Tribunal under Section 11-A of the Industrial Disputes Act, 1947, to see that the dismissal order passed by the Respondent-Management is shockingly disproportionate to the gravity of the misconduct committed by the Petitioner-workman or not and to see whether the dismissal authority has applied his mind considering his past record before passing the dismissal order.

10. I would like to mention that it is a proved case of misconduct committed by the Petitioner-workman under Standing Orders 16(2). As seen from the records no doubt the petitioner-workman or his wife got admitted one person by name Venkatesham in the Main Hospital, Kothagudem for treatment as an out-patient as falsely introducing Petitioner's father. It is a fit case where the interference of this Tribunal is rightly required for minor offence of admitting an outsider that too as an out-patient, capital punishment like dismissal from service is not warranted and the dismissal authority should have considered his past record and he should have awarded a lesser punishment for this minor misconduct. Moreover, I find that the Respondent-Management has not undergone any serious loss or reputation of its image is not jeopardise by the misconduct of the Petitioner-workman. Moreover the misconduct committed by the Petitioner is not at all relevant to the nature of duties performed by him, and it is not day to day activity of the Petitioner-workman. The past record of the workman is clean and without any punishments. Therefore I consider that awarding capital punishment of dismissal from service is disproportionate to the proved charge. Hence I find that the ends of justice will be metted out if the Petitioner-workman is awarded a lesser punishment. He is dismissed from service in the year 1986. Now we are in 1993. So in view of the above circumstances, I find that awarding half-of the back wages as punishment from the date of the Petitioner dismissal to the date of this passing of the Award would meet the ends of justice, with reinstatement into service and all other benefits.

10. In the result, the action of the Management of M/s. Singareni Collieries Company Limited, Area-I, Ramagundam Division P.O. Godavari Khani, Dist. Karimnagar in dismissing Sri N. Ramdas, Compositor from service with effect from 30-11-1986 is not justified. The Respondent-Management is directed to reinstate the Petitioner-workman into service with continuity of service and with all other attendant benefits paying half of the back wages w.e.f. 30-11-1986 to the date of this Award.

Accordingly Award is passed.

Typed to my dictation, given under my hand and the seal of this Tribunal, this 8th day of June, 1993.

Y. VENKATACHALAM, Industrial Tribunal-I

Appendix of Evidence

Witnesses Examined on
behalf of the Respondent-
Management :

M.W1 —V.R. Gopal Rao

Witnesses Examined on behalf
of the Petitioner-Workman :

NIL

Documents marked for the Petitioner-Workman :

NIL

Documents marked for the Respondent—Management :

Ex. M1/Dt. 27-5-85—Appointment letter issued by G.M.R.G.I. to Sri V. R. Gopal Rao, Welfare Officer, Gdk. No. 1 Incline with regard to conduct the domestic enquiry at Godavarikhani 1 & 3 Inclines.

Ex. M2/Dt. 18-6-85—Copy of the charge sheet issued by Press Officer to N. Ramdass.

Ex. M3/Dt. 20-6-85—Explanation submitted by N. Ramdass to the Press Officer, S.C. Printing Press, Godavarikhani.

Ex. M4/Dt. 17/18-4-88—Complaint given by the C.M.O. to the Press Officer, Gdk. S.C. Co. Ltd., against N. Ramdass.

Ex. M5/Dt. 6-8-85—Copy of the Enquiry Notice issued by the Press Officer, RG to Sri N. Ramdass.

Ex. M6/Dt. 7-2-86—Copy of the Enquiry Notice issued by the Press Officer, RG to N. Ramdass.

Ex. M7/Dt.—Family Attendance Book.

Ex. M8/Dt.—Case Sheet.

Ex. M9/Dt.—Enquiry Proceedings.

Ex. M10/Dt. 23-3-86—Enquiry Report.

Ex. M11/Dt. 28-11-86—Copy of the dismissal letter issued by the General Manager, Ramagundam-I to N. Ramdass.

नई दिल्ली, 25 जून, 1993

का.प्र. 1550 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रिय सरकार एम०सी०सी०एन० के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक प्रतिक्रिया, हैदराबाद के पंचरट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-6-93 को प्राप्त हुआ था।

[संख्या एन-21012/2/88-डी-III (बी)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 25th June, 1993

S.O. 1550.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the

Central Government hereby publishes the award of the Government Industrial Tribunal Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of S.C.C. Ltd. and their workmen, which was received by the Central Government on 23-6-93.

[No. L-21012/2/88-DIII(B)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL,
HYDERABAD

PRESENT :

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal.

FOURTH DAY OF JUNE NINETEEN HUNDRED
NINETY THREE

INDUSTRIAL DISPUTE NO. 71 OF 1988
BETWEEN

Shaik Hussain, Ex-Hauler Khalasi—Petitioner.
AND

The Management of Singareni Collieries Company Limited, Area-I, Ramagundam Division, Post, Godavarikhani, Karimnagar District.—Respondent.

APPEARANCES:

M/s. A. K. Jaya Prakash Rao, P. Damodar Reddy, V. N. Goud and Ch. Laxminarayana, Advocates for the Petitioner—Workmen.

Sri K. Srinivasa Murthy and Miss G. Sudha, Advocates for the Respondent-Management.

AWARD

The Government of India, Ministry of Labour, by its Order No L-21012/2/88-D.III(B), dt. 11-4-1988/26-7-1988 referred the following dispute under Section 10(1)(d) & (2A) of the Industrial Disputes Act, 1947 between the employers in relation to the Management of M/s. Singareni Collieries Company Limited, Area-I, Ramagundam Division P.O. Godavarikhani, Distt. Karimnagar (A.P.) and their workmen to this Tribunal for adjudication :

"Whether the action of the management of M/s. Singareni Collieries Co. Ltd., Area-I, Ramagundam Division, P.O. Godavarikhani, Dist. Karimnagar (A.P.) is justified in dismissing Sri Shaik Hussain, Hauler Khalasi, GDK. 6A Incline from service w.e.f. 26-10-1983. If not, to what relief the concerned workman is entitled ?"

This reference was registered as Industrial Dispute No. 71 of 1988 and notices were issued to the both the parties.

2. The workman filed the claims statement and the brief contents of the claim statement are as follows:

The Petitioner submits that he was appointed as a General Mazdoor in the Respondent-Company on 11-12-1963 thereafter he was promoted as Trammer in 1971 and was further promoted as Hauler Khalasi in the year 1976. The Petitioner submits ever since the date of joining the service he has put in unblemished record of service till he was illegally dismissed from service by the Respondent w.e.f. 26-10-1983. He submitted representations to the Executive Director, General Manager, Chairman and Managing Director but none of the representations submitted by him have seen the light of the day. The Petitioner submits while he was working under the Respondent he was issued with a charge sheet dt. 22-8-1983 alleging that he made an attempt of assault on Sri J. Laxminarayana, Petitioner submits that the charge levelled against him is false and baseless and the said allegation is only a concocted one. The Petitioner further submits the respondent without considering the explanation submitted by the petitioner ordered for an enquiry and a staged managed enquiry was conducted wherein the petitioner was denied a reasonable opportunity to participate in the enquiry. The Enquiry Officer conducted the enquiry in English and whereas the Petitioner was illiterate and is not conversant with the procedure of enquiry and with English language. The petitioner submits he being illiterate he was not conversant with the procedure of enquiry and he could not elicit anything in the enquiry from the Management witnesses. The petitioner therefore submits the enquiry proceedings conducted by the Enquiry Officer are vitiated with material irregularities. The petitioner submits he gave evidence before the Enquiry Officer and Sri J. Laxminarayana who was the complainant himself cross-examined the petitioner and this would clearly disclose that the said complainant was biased against the petitioner having been lodged a complaint against the petitioner. The petitioner respectfully submits the allegation that he beat Sri Laxminarayana, and challenged him to come out of the office is absolutely false and concocted. The Petitioner submits on the basis of the report of the Enquiry Officer the Respondent passed the orders of dismissal, dismissing the petitioner from service, on the basis of the false complaint lodged by Laxminarayana. The Petitioner further submits while imposing the maximum punishment of dismissal from service the Respondent has failed to take into consideration the quantum of punishment to be imposed on him but imposed the maximum punishment of dismissal from service which is shockingly disproportionate and also do not commensurate with the charges levelled against the petitioner, if any, proved. The petitioner submits and reiterates that he has not committed any misconduct which warrants the maximum punishment of dismissal from service. While imposing the maximum punishment of dismissal from service the Respondent has failed to take into consideration the past conduct of the petitioner. The orders of dismissal passed by the Respondent is illegal and invalid. The Petitioner submits the Respondent also issued a similar charge-sheet to one Sri Saliganti Narsaiah and he has raised a dispute in I.D. No. 60]

85 and this Hon'ble Court granted him reinstatement into service with continuity of service and all other attendant benefits. The Petitioner submits ever since the date of his dismissal from service he remained unemployed and could not secure any alternate employment in spite of his best efforts. It is therefore, prayed that this Hon'ble Court may be pleased to set aside the orders of dismissal passed by the Respondent and grant the relief of reinstatement into service, with continuity of service, full back wages and all other attendant benefits.

3. The Respondent-Management filed the counter and the brief contents of the counter are as follows.

It is true that the workman in dispute, Sri Shaik Hussain, was appointed as General Mazdoor in the Respondent Company on 11-12-1963 and in the normal course he was also promoted as Trammer in 1971 and Hauler Kalasi in 1976. The allegation that ever since the date of joining the service the petitioner put in unblemished record of service till he was dismissed from service by the Respondent-Company w.e.f. 26-10-1983 is false and the Petitioner is put to strict proof of the same. The allegation that the Petitioner gave representations to the Executive Director, General Manager, Chairman and Managing Director but none of them seen the light of the day is not correct. It may be noticed that the Petitioner was well informed about his case and on merits he was dismissed and the management is justified in taking action under Company's Standing Order 16(5) and as such the petitioner was fully satisfied and has not chosen to raise any industrial dispute in this Court at relevant period. The Petitioner has only chosen to raise a dispute in the year 1988. It is well settled law that stale claims cannot be entertained and when the petitioner having received the dismissal order has not chosen to raise any dispute during the relevant period. But as an after thought and with an intention to illegally enrich has chosen to raise this dispute now, which was numbered as I. D. No. 71/88 nearly after a lapse of five years. On the ground of belated claim this petition is liable to be dismissed. It is true that while the Petitioner was working as Hauler Khalasi a complaint was received from Sri J. Laxminarayana, Head Overman that he was beaten by the Petitioner with his waist belt and latter tried to assault the Head Overman with a spade threatening that the Petitioner would kill Sri Laxminarayana. In view of the complaint a chargesheet was issued on 22nd August, 1983 and the Petitioner has submitted his explanation and as the Management was not satisfied with the explanation given by the Petitioner appointed Enquiry Officer to conduct domestic enquiry and the domestic enquiry was conducted as the principles of natural justice and full and fair opportunity was given to the Petitioner to participate in the enquiry. It is true that the Petitioner gave evidence before the Enquiry and the complainant Sri J. Laxminarayana, cross examined him. It is also well settled law that the complainant who gave a complaint has to prove the charge beyond doubt. At basing on the complaint given by Sri J. Laxminarayana alone the Respondent Management took disciplinary action. The petitioner to suit his circumstances has chosen to omit certain material facts

in the claim petition. It may be noticed that on 20-8-1983 at about 2.35 P.M. when Sri J. Laxminarayan, Head Overman had not agreed for his request to allow him to go home Sri Shaik Hussain, Hauler Khalasi, abused Sri J. Laxminarayana in filthy language, threatened him with dire consequences and beat Sri J. Laxminarayana, Head Overman, and also threatened to kill him with the spade. Basing on the evidence of the eye witnesses only Sri Shaik Hussain, Hauler Khalasi was found guilty of the charges levelled against him under Company's Standing Orders. It is respectfully submitted that on receipt of the entire enquiry file the Respondent Management has gone into the enquiry file, past record of the petitioner and applied its mind and passed the dismissal order. It is submitted that the petitioner cannot compare his case with Sri Saliganti Narsaiah's case or with regard to the orders passed by this Tribunal in I.D. No. 60/85. It may be noticed that the Respondent has already filed a Writ Petition against the orders in I.D. No. 60/85 in the High Court. In view of the provisions of Section 17B of the I.D. Act, the Respondent management permitted Sri Saliganti Narsaiah to work. The allegation that he was reinstated with back wage is not correct. It is submitted that this Respondent is not responsible for his unemployment for regard to the consequences faced by the petitioner after the misconduct committed. It is respectfully submitted that the Petitioner is not entitled to the reliefs prayed for, much less for setting aside the dismissal order, reinstatement into service with full back wages, continued service and other attendant benefits as prayed. The petitioner filed the claim petition at a belated stage.

4. W.W.1 was examined on behalf of the Workman and no documents were marked. Whereas the Management examined M.W.1 and marked Exs. M1 to M11.

5. My predecessor passed preliminary order on 28th July, 1990 holding that the enquiry is not vitiated and it was held following all the principles of natural justice and as it need not be set aside.

6. The point for adjudication is whether the action of the Management is justified in dismissing Sri Shaik Hussain, Hauler Khalasi, GDK 6A Incline from service w.e.f. 26th October, 1983?

7. The contention of the Petitioner-workman is that ever since the date of joining the service he has put in unblemished record of service till he was illegally dismissed from service by the Respondent w.e.f. 26th October, 1983. Aggrieved by the dismissal orders passed by the Respondent he submitted representations to the Executive Director, General Manager, Chairman and Managing Director but none of the representations submitted by him have seen the light of the day. The petitioner submits that while he was working under the Respondent he was issued with a charge sheet dated 22nd August, 1983 alleging that he made an attempt to assault on Sri J. Laxminarayana and that the charge levelled against him is false and baseless.

8. In rebuttal the Respondent-Management contended that the allegation that ever since the date of joining the service the petitioner put in unblemished record of service till he was dismissed from service by the Respondent Company with effect from 26th October, 1983 is false and that the allegation that the petitioner gave representations to the Executive Director, General Manager, Chairman and Managing Director none of them seen the light of the day is not correct. The petitioner was well informed about his case and on merits he was dismissed and the Management was justified in taking action under Company's Standing Order 16(5).

9. The charge against the Petitioner-workman is that on 20th August, 1983 after working for one hour, the petitioner got stomach and headache, he asked for permission and rest for one hour only, but the Foreman Laxminarayan refused to give permission. Then the Petitioner asked the said Laxminarayana how he is allowing the other workers to leave early, when request. For this the said Laxminarayan got annoyed and asked the petitioner to go away and when the petitioner asked him why he is behaving like this, Sri Laxminarayana slapped the Petitioner. The Petitioner also submits that he wrote a complaint about the slapping by Laxminarayana to the Collieries Manager. A perusal of the Enquiry Report Ex. M10 would show that when Laxminarayana refused to grant permission, the Petitioner got angry and started abusing M.W.1 (Laxminarayana) using filthy language. Then M.W.1 (Laxminarayana) asked him (Petitioner) to go away and not to create disturbance in the Overman Room. As the Petitioner did not stop shouting and abusing the M.W.1. When M.W.1 came out of the Overman room the petitioner followed him and caught his hand when the M.W.1 freed his hand the accused took his waist belt and beat M.W.1 twice and third time when the accused was beating him M.W.1 caught hold of the belt. After 10 minutes the Petitioner again came to the Overman room along with Saliganti Narsaiah, Hauler Khalasi and was carrying a spade. They entered the overman room and the petitioner raised the spade to beat Laxminarayana, other workers and Overman intervened and saved Laxminarayana. Other witnesses examined on behalf of the Management also gave the same evidence to the effect that the Petitioner abused against the Petitioner-workman and none of the quence of killing him. All these facts are false and fabricated as alleged by the Petitioner-workman. Whatever it may be, there is no criminal case launched against the Petitioner-workman and none of the management witnesses were injured in the incident. I am of the opinion that there might have been some hot exchanges and abuses between the Petitioner-workman and the Head Overman for the simple reason that permission was not given to the Petitioner by the shift Head Overman. For this simple act, it does not mean that the Petitioner should be dismissed from service which is shockingly disproportionate to the gravity of the misconduct committed by him. Be that whatever it may, I find that the dismissal order passed against the Petitioner is not proper and justified. Hence the Petitioner is entitled to be reinstated into service without back wages.

10. In the result, the action of the Management of M/s. Singareni Collieries Company Limited, Area-I Ramagundam Division, P.O. Godavari Khani, District Karimnagar is not justified in dismissing Sri Shaik Hussain, Hauler Khalasi, GDK No. 6A Incline from service w.c.f. 26th October, 1983. The Respondent Management is directed to reinstate the Petitioner-

workmen without back wages.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 4th day of June, 1993.

Y. VENKATACHALAM, Presiding Officer

Appendix of Evidence

Witnesses Examined for
the Management :

M.W.1—M. Vittal Rao.

Witnesses Examined for
the Workmen .

W.W.1—Shaik Hussain.

Documents marked for the Management :

Ex. M1—Charge Sheet dated 22nd August, 1983 issued to S. K. Hussain by the Colliery Manager, GDK No. 6A Incline, S.C. Co. Ltd., Ramagundam Division-II.

Ex. M2—Explanation dated 23rd August, 1983 to the Charge Sheet submitted by S. K. Hussain to the Colliery Manager, GDK No. 6A Incline.

Ex. M3—Complaint dated 20th August, 1993 of Syed Hussain to the Colliery Manager, GDK 6A Incline.

Ex. M4—Representation dated 20th August, 1983 made by T. Chandraiah and 15 others to the Colliery Manager.

Ex. M5—Complaint dated 20th August, 1983 given by J. Laxminarayana to S.M.E. and Colliery Manager, S.C. Co. Ltd., Godavari-khani.

Ex. M6—Letter dated 22nd August, 1983 addressed by K. Narasiah to the Colliery Manager, 6A Incline with regard to incident took place on 20th August, 1983.

Ex. M7—Enquiry Notice dated 26th August, 1983 issued to S. K. Hussain by the Colliery Manager, GDK No. 6A Incline, S.C. Co. Ltd., Godavarikhani, Ramagundam.

Ex. M8—Letter dated 29th August, 1983 addressed to the Colliery Manager by S. K. Hussain with regard to adjournment of enquiry from 29th August, 1983 to 2nd September, 1983.

Ex. M9—Enquiry Proceedings.

Ex. M10—Enquiry Report.

Ex. M11—Dismissal Order dated 25th October, 1983 issued to S. K. Hussain by the Additional C.M.E. R.G.W. S.C. Co. Ltd., Ramagundam Collieries.

Documents marked for the Workmen

NIL

नई दिल्ली, 28 जून, 1993

का.आ 1551. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 11) की धारा 17 के अनुवर्ण में, केन्द्रीय सरकार द्वारा दूरदर्शन केंद्र, लखनऊ के प्रबन्धन में संचालित निरीक्षणों और उनके कर्मचारियों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधि-करण, लेबर कोर्ट, कानपुर के पंचमट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25 जून 1993 को प्राप्त हुआ था।

[सं. 1-42012/1/89-आई आर (डि. वी. 0. वी.)]
के. वी. वी. उन्नी, डेस्क अधिकारी

New Delhi, the 28th June, 1993

S.O. 1551.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Doordarshan Kendra, Lucknow and their workmen, which was received by the Central Government on 25th June, 1993.

[No. I-42012/1/89-IR(DV)]
K.V.B. UNNY, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
PANDU NAGAR, KANPUR

Industrial Dispute No. 51 of 90

President,
Doordarshan Karamchari Congress,
1 Abdul Aziz Lane,
Lucknow.

AND

Director,
Doordarshan Kendra,
5 Meerabai Marg,
Lucknow.

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-42012/1/89-I.R.D.U. dated 19-1- (year not mentioned) has referred the following dispute for adjudication to this Tribunal :—

Whether the Director, Doordarshan Kendra, Lucknow was justified in terminating the services of Sri Ram Bachan w.e.f. July 85 ? If not, what relief the workman is entitled to ?

2. The industrial dispute on behalf of the workman Sri Ram Bachan has been raised by Doordarshan Karamchari Congress (hereinafter referred to as the Union), through its President.

3. The case of the Union is that the workman was appointed on 16-8-83, as an unskilled worker in class IV category at Doordarshan Kendra Lucknow. At that time and even thereafter post in class IV Category were vacant at Doordarshan Kendra Lucknow but despite that due to malafide intention the management forced the workman to work as a daily rated workman on a daily wage of Rs. 10/-. The Union further alleges that the workman had worked for 15 days, 20 days and 22 days continuously with artificial breaks of 4 or 5 days resorted to by the management. During the break periods the duty which was being given by the workman was taken from new hands. Before the termination of his services on 31-7-85, the workman had worked for 240 days continuously every year. According to the Union, the action of the management in terminating the services of the workman was illegal as the management did not comply with the provisions of section 25F of I.D. Act. The Union has, therefore, prayed that the workman be reinstated in service with full back wages and continuity of back service.

4. The case is contested by the management. The management plead that the workman was never appointed at Doordarshan Kendra Lucknow. He might have been engaged as a casual labour for some specific job for specified period. The management deny that the workman ever completed 240 days of continuous service in a year. Thus the workman has no claim at all.

5. In its rejoinder the Union has alleged that the attendance of the workman would be found marked in the attendance register/mustor roll and payment register through which wages used to be paid. The Union has further alleged violation of the provisions of section 25F, 25H and 25T of the Industrial Disputes Act, 1947.

6. Whereas the Union, in support of its case, has examined the workman Sri Bachan and filed documents, the management have examined Sri Hori Lal Pasi, who is posted as Administrative Officer at Doordarshan Kendra, Lucknow.

7. It appears from the testimony of the management witness that he knows nothing about the workman. In his cross examination he has deposed that no record of casual labour is maintained at Doordarshan Kendra, Lucknow. However, wages are paid to casual labour through payment vouchers.

8. The management witness has further deposed that he never remained posted at Doordarshan Kendra, Lucknow during 1983 to 1985. According to him without looking into the records, he cannot say whether or not Sri Ram Bachan had worked as a casual labour at Doordarshan Kendra, Lucknow. He also says that before or after swearing of affidavit filed by him in this case on behalf of the management he has not seen the record in this regard.

9. Annexure I to the affidavit is the photostat copy of the letter dated 24-8-83 from the Senior Administrative Officer on behalf of the Director Doordarshan Kendra, Lucknow informing Sri Ram Bachan that his name had been forwarded by the Employment Exchange Lucknow for selection as a casual labour. He was further informed to appear on 30-8-83 for interview.

10. Annexure 2 to the affidavit of the workman is the photostat copy of the letter dated 1-9-83, from the Administrative Officer on behalf of the Director Doordarshan Kendra Lucknow, informing Sri Ram Bachan that on the basis of interview held on 30-8-83, he should report for duty at Doordarshan Office situate at 5 Meera Bai Marg Lucknow on 16-9-83.

11. From the above two documents it becomes evident that his appointment as casual labour was made on 16-9-83 after his selection in the interview conducted on 30-8-83. It is further evident that his name was sponsored by the Employment Exchange Lucknow. In the claim statement the date of appointment of Sri Ram Bachan is given as 16-8-83. It appears to me that in all probability a clerical error has cropped while giving date of appointment.

12. The next question to be examined is whether Sri Ram Bachan had worked as a casual labour continuously for 240 days or more during the period between one year prior to the date of termination of his services. Annexure VI to the affidavit of the workman is the statement of his working. It is calculated by the workman himself. From the said statement it appears that from August 1984 to 31-7-85 he had worked for 283 days. This statement however, cannot be relied upon.

13. Annexure IV is the copy of letter dated 8-2-85 from the Administrative Officer to the Regional Employment Officer informing him that during the period Jan, 84 to November 1984, Sri Ram Bachan had worked for 157 days only. However from the statement Annexure VI, it appears that during the said period he had worked for 283 days. The two statements cannot be correct. The statement of working days as given in Annexure IV appears to be more reliable. There is no evidence from the side of the Union/workman to show that the workman/Union ever challenged the statement of working days, as certified by the Administrative Officer Doordarshan Kendra Lucknow in his letter dated 8-2-85 copy annexure IV.

14. In para 4 of his statement in cross examination the workman has deposed that he had worked continuously from 16-9-83 to 31-7-85. This is belied even by the statement of working days given by him in an-

nexure VI. He has also deposed that he and other workmen used to get certificates regarding the period of their working after 15 days. The best evidence for the Union, therefore, would have been to produce these certificates given by Doordarshan Kendra Lucknow.

15. From annexure V to his affidavit, it is also evident that he had never worked continuously at Doordarshan Kendra Lucknow. Annexure V is the copy of certificate dt. 5-1-84 issued by the Administrative Officer, on the application dated 3-1-84 of Sri Ram Bachan regarding his working days from September to December 1983. The certificate shows that he had worked only for 70 days as against 122 days.

16. Hence, despite the fact that there is virtually no evidence from the management side, the own evidence of the Union belies its case that the workman had worked continuously for 240 days or more during the period of one year prior to the date of termination of his service.

17. This being so, the question of violation of section 25F on which alone stress was laid by Sri M. Shakeel, the auth. representative for the Union, does not arise. The action of the management, therefore, cannot be held as unjustified or illegal.

18. However, with his affidavit the workman has filed the copy of memorandum dated 7-5-85 issued by the Department of Personnel & Training on the subject of regularisation of services of casual workers in group D. According to this circular a decision has been taken as a one time measure that casual labours recruited before the issue of these instructions may be considered for regular appointment to group D posts in terms of General Instructions even if they were recruited otherwise than through the Employment Exchange provided they are eligible for regular appointment in all other respects. We have seen above that the workman was appointed as a casual labour on his name being sponsored by Employment Exchange, Lucknow. Therefore, it will be just if the management is directed to consider his case for regular appointment to group D post provided he fulfils the eligible criteria for regular appointment. In his cross examination, he has said that he had passed 8th Class. He has given his age as 30 years. It could be said that he may be now over age but he could not have been over age when he was appointed as a casual labour on 16-9-83. Therefore, while considering his case, the present age of Sri Ram Bachan should not be taken into consideration and relaxation should be given in age on the basis that he was first appointed as a casual labour at Doordarshan Kendra Lucknow on 16-9-83.

19. Held that the action of the management of Doordarshan Kendra Lucknow in terminating the services of Sri Ram Bachan is not unjustified. However as observed above, Sri Ram Bachan should be considered for regular appointment to Group (D) Post provided he fulfils eligibility criteria for regular appointment in the manner stated above.

20. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

नई दिल्ली, 28 जून, 1993

का.सा.1552:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार द्वारा लखनऊ के प्रबन्धन के संयुक्त नियोजकों और उनके फर्मकारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लेबर कोर्ट, कानपुर के पंचायत को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-6-93 को प्राप्त हुआ था।

[संख्या एन-10012/20/89-आई आर (डीयू.)]
के.बी.बी. उन्नी, ईस्क अधिकारी

New Delhi, the 28th June, 1993

S.O. 1552.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Doordarshan Lucknow and their workmen, which was received by the Central Government on 25-6-1993.

K.V.B. UNNY, Desk Officer
[No. L-40012/20/89-IR(DU)]

ANNEXURE

BEFORE SRI ARJAN DEV PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
PANDU NAGAR, KANPUR

Industrial Dispute No. 131 of 90

In the matter of dispute between —

Pardesi Lal C/o Sri S. B. Singh
Divisional Secretary Bhattiya
Telephone Karamchari Sangh
Mahanagar Lucknow.

AND

Director

Doorsanchar (Central Area)
Seth Bhawan Mala Cinema
Ke Pichhe, Nawal Kishore Road
Lucknow.

AWARD

1. The Central Government Ministry of Labour vide its notification number L-40012/120/89-D.2(B) dated 2-5-90 has referred the following dispute for adjudication to this Tribunal :—

Whether the Director Telecom (Central Area) Lucknow was justified in terminating the services of Sri Pardesi Prasad w.e.f. 29-2-88 ? If not, what relief the workman was entitled to ?

2. In this case 22-3-93 was the date fixed for the cross examination of the workman, on the said date neither the workman nor any body on his behalf appeared. It happened to be the second date for the

cross examination of the workman. Admittedly the workman had worked continuously as a daily Rated casual labour from June 1986 to Feb. 1988. The contention of the workman is that his services were terminated in violation of the provisions of section 25F of the I.D. Act.

3. In defence it has been pleaded by the management that the services of the workman were terminated w.e.f. 1-3-88 by giving him one month's notice dated 1-2-88, in accordance with the instructions contained in circular memo dated 1-10-84 issued by the Government of India, Ministry of Communication, New Delhi. It is further pleaded by the management that the workman declined to receive compensation when offered. Since admittedly he had worked continuously for one year within the meaning of section 25B of the Act before the termination of his services, his services could be terminated validly only after complying with the provisions of section 25F of the Act. As said above according to the management the services of the workman were terminated by giving him one month's notice and retrenchment compensation. However there is no evidence in this regard from the side of the management, but in view of what has been held by me in my award dated 6-11-92, given in I.D. No. 88/88, Bhola Nath Agarwal Versus G.M. Telcom Kanpur on the basis of judgement dated September 11, 1990 of C.A.T. Allahabad in T.A. No. 1239 of 87 Acchaiber Lal Versus Union of India, no relief can be granted to the workman. In the said order dated 11-9-90, C.A.T. Allahabad has held that Telcom Department is not an 'Industry'. Further in O.A. No. 552 of 1989 Union of India and others Versus Shyam Sunder Lal and other C.A.T. Allahabad in its order dated 26-2-91 has held that C. A. T. Allahabad has jurisdiction to entertain an application under section 19 of the Central Administrative Tribunal's Act, 1985 against the order passed by an Industrial Tribunal/Labour Court under section 330(2) of the Act.

4. Hence, what has been held by C.A.T. Allahabad, it is held that Telecom Department is not an Industry. This being so the reference made by the Ministry of Labour, Government of India, is miscon sidered. It is decided accordingly.

ARJAN DEV, Presiding Officer

नई दिल्ली, 28 जून, 1993

का.प्र. 1553 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल रेलवे श्रमिकों के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारियों के बीच प्रमुख में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधि करण, लेबर कोर्ट, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-6-93 को प्राप्त हुआ था।

[संख्या एल-41012/62/89-आई प्रार (डीयू)]

के.बी.बी. उन्नी, हेमक अधिकारी

New Delhi, the 28th June, 1993

S.O. 1553.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour

Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Central Railway, Jhansi and their workmen, which was received by the Central Government on 25-6-1993.

[No. L-41012/62/89-IR(DU)]

K.V.B. UNNY, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
PANDU NAGAR, KANPUR

Industry Dispute No. 314 of 1989

In the matter of dispute between :

Sri Surender Singh
President Chaturth Shreni Rail
Mazdoor Congress
4 Heerapur Nagra
Jhansi.

AND

Senior D.E.E. (G)
Central Railway,
Jhansi.

AWARD

1. The Central Government, Ministry of Labour, vide its notification number L-41012/62/89-I.R.(DU) dt. 13-12-1989, has referred the following dispute for adjudication to this Tribunal —

Whether the action of Sr. D. E. E. (G) Central Rly., Jhansi in terminating the services of Sri Brakh Bhan s/o Sri Tuduwa, M.R. C.L. w.e.f. 15-4-84, is justified? If not, what relief the workman is entitled to?

2. The case of the Union is that the workman was recruited as ETL Khalasi on 1-2-82. However, w.e.f. 15-5-84, the management stopped giving him the duty. Before taking this action the management did not give him any opportunity to say anything in his defence. Even no inquiry was held against him under Railway Servants (Discipline and Appeal) Rules, 1968. The order is therefore illegal. The Union has, therefore, prayed for the reinstatement of the workman with full back wages and continuity of service.

3. The case is contested by the railway management. The management plead that the provisions of I.D. Act, 1947, do not apply to the Railway Administration. In fact railway is not an industry. It is further pleaded by the management that the workman was engage as a casual labour on 5-2-76. His services were regularised w.e.f. 5-10-82. According to the management, the workman unauthorisedly absented himself on 24-3-83. On 28-9-83, on his representation, after his interview, the competent authority by means of its order dt. 30-9-83, gave him fresh appointment. Even thereafter, he remained on unauthorised absence from 15-2-84 to 14-5-84. Because of it he was deemed to have quitted the services w.e.f. 15-5-84. Thus there is no illegality in the action of the management.

4. In support of its case the Union has examined the workman and has filed some documents. On the other hand, the management has adduced no evidence oral or documentary.

5. In his cross examination the workman has admitted that he joined the services of the railway on 5-2-76 and that his services were regularised in October, 1982. This is also the case of the management in the written statement. It follows therefore that before his alleged unauthorised absence on two occasions as pleaded by the management, the workman was a regular employee of the railway. In his cross examination, the workman has denied that he had remained on unauthorised absence from 24-3-83 to 20-9-83. He has admitted this much that he has not been paid his wages w.e.f. 15-5-84.

6. Thus there is no evidence from the side of the management about the workman's unauthorised absence from 24-3-83 to 20-9-83 & 15-2-84 to 14-5-84. Even if it is assumed that according to the management he was on unauthorised absence during the above said periods, the workman being a regular employee of the railway, the Departmental inquiry into the charges of unauthorised absence under Railway Servants (Discipline & Appeal) Rules 1968 should have been held by the railway against the workman. In the absence of such Disciplinary Proceedings, his services could not have been terminated. There is absolutely no evidence from the management side that he left services of his own accord. The suggestion made to this effect to the workman by Sri Bhattacharya, the authorised representative for the workman was denied by the workman.

7. Hence, I hold that the workman did not quite in services of the railway of his own and further hold that the action of the management in terminating his services w.e.f. 15-5-84, is illegal and void abinitio. Consequently, the workman is held entitled to his reinstatement with full back wages and continuity of service. The reference is decided accordingly.

ARJAN DEV, Presiding Officer

नई दिल्ली, 28 जून, 1993

का.प्र. 1554:—औद्योगिक विवाद अधिनियम, 1947 (1947, का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल रेलवे, झांसी के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निहित औद्योगिक विवाद से केन्द्रीय सरकार औद्योगिक अधि-करण, लेबर कोर्ट, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-6-93 को प्राप्त हुआ था।

[संख्या एन-41012/68/89-आई आर(सीयू)]

के.वी.बी. उन्नी, डैस्क अधिकारी

New Delhi, the 28th June, 1993

S.O. 1554.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-Cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to

the management of Central Railway, Jhansi and their workmen, which was received by the Central Government on 25-6-1993.

No. L-41012/68/89-IR(UD)

K. V. B. UNNY, Desk Officer
ANNEXURE

BEFORE SRI ARJAN DEV PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRI-
BUNAL-CUM-LABOUR COURT PANDU NAGAR

KANPUR

Industrial Dispute No. 299 of 1989
In the matter of dispute between

The President, Rashtriya Chaturthshreni Rail
Mazdoor Congress (Intuc) 2/363 Namnair
Agra.

AND

The Divisional Railway Manager Central Rail-
way Jhansi.

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-41012/68/89, I.R.D.U. dated 28-11-89, has referred the following disputes for adjudication to this Tribunal :—

Whether the Divisional Railway Manager, Central Railway Jhansi is justified in terminating the services of Sri Ramesh w.e.f. 19-11-86 ?
If Not, what relief the workman was entitled to?

2. The case of the Union in short is that the services of the workman who was MRCL was terminated illegally by the railway w.e.f. 19-11-86 on the ground of alleged production of fake service card at the time of employment. According to the Union before terminating his services, the railway did not issue the workman any chargesheet nor held any inquiry against him under Rly. Servants (Discipline and Appeal) Rules 1968. The Union has, therefore, prayed for workman's reinstatement with full back wages and all consequential benefits.

3. The case is contested by the management. The management plead that the Rly. Administration is not an Industry. The workmen was appointed when there was a bar of fresh recruitment. However, on investigation it was found that the service card produced by him at the time of employment was fake. The railway never terminated his services nor discharged him from service. In fact his appointment was void abinitio. In the circumstances, the Union is entitled to no relief in respect of the workman.

4. In support of its case, the Union has examined the workman and has also filed some documents. On the other hand no evidence oral or documentary, has been adduced by the management.

5. In his examination in chief the workman has deposed that for the first time he joined the services of the railway on 15-3-80. According to him his medical test was held on 30-7-84 and after his medical

test he worked continuously till 19-11-86. Of course prior to 30-7-84, he did not work continuously some time he was not given any duty.

6. From the side of the management the Railway Board Circular placing bar on fresh recruitment of casual labour has not been filed.

7. There is no evidence from the side of the management to show that after 19-11-86 duty was not allowed to the workman because of alleged production of service card which on investigation was found fake by the workman. There is nothing on record to show that any show cause notice in this regard was given by the Railway to the workman to prove that the service card alleged to have been produced by him at the time of employment was not fake. From the side of the Union reliance has been placed on the decision dated May 27, 1990, of CAT Allahabad in Registration (OA) No. 160 of 1989, Tula Ram Versus Union of India and others. It was also the case of a railway employee who had been working as a Parcel Porter. In that case, there was an order to the effect that the casual labour card furnished by the petitioner was bogus. It was held that before recording such a finding the Principles of Natural Justice require that reasonable opportunity should be given to the petitioner to show cause against such a conclusion. The railway ought to have communicated the grounds and the evidence leading to the allegations of fake casual labour card to the petitioner to rebut the allegations. The Tribunal, therefore, held that the order of termination is illegal and ordered reinstatement of the petitioner without back wages with liberty to the management to conduct a proper inquiry in the matter of the casual labour card in accordance with the principles of natural justice and take suitable action according to law.

8. In view of the above decision of CAT Allahabad, the action of the management in terminating the services of the workman Sri Ramesh w.e.f. 19-11-86 cannot be held as justified.

9. In view of the final order passed by CAT Allahabad in the aforesaid case, the workman Sri Ramesh shall be reinstated within one month from the date of enforcement of this award. He will however not be paid any back wages. The management will be at liberty to conduct a proper inquiry in the matter of casual labour card, alleged to have been produced by the workman at the time of his employment, in accordance with the principles of Natural Justice and take suitable action according to law.

10. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

नई दिल्ली, 28 जून, 1993

का.प्र. 1555 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टेलीकम, फैजाबाद के प्रबन्धन के संवद्ध नियोजकों और उनके कर्मचारों के बीच झूठ-बुझ में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-6-93 को प्राप्त हुआ था।

[संख्या एम-40012/52/91-आई आर (डीयू)]
के. वी. बी., जूनो, डेस्क अधिकारी

New Delhi, the 28th June, 1993

S.O. 1555.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-Cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Telecom., Faizabad and their workmen, which was received by the Central Government on 25-6-93.

[No. L-40012/52/91-IR(DU)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT PANDU
NAGAR KANPUR
Industrial Dispute No. 169 of 1991

BETWEEN

The Secretary,
Bhartiya Telephone Karamchari Sang,
Mahanagar Telephone Exchange,
Lucknow.

AND

The Divisional Engineer,
Telecom.,
Faizabad.

AWARD

1. The Central Government, Ministry of Labour, vide its notification number L-40012/52/D I.R.D.U. dated 30-7-91, has referred the following dispute for adjudication to this Tribunal :—

Whether the action of the management of D.E. Faizabad in not granting temporary status to Sri Keshari Prasad S/o. Sh. Human Prasad Tiwari and Sri Jagdish Prasad S/o Sri Ram Sajiwan in terms of DGT Letter no. 269/10/87-STN dated 17-11-89, is justified? If not to what relief are the workmen concerned entitled?

2. There are two workmen in this case, namely, Sri Keshari Prasad and Jagdish Prasad. An industrial dispute on their behalf has been raised by the Union, The Union filed no affidavit evidence in support of its case and so the case was reserved for award.

3. Since there is no evidence in support of the case of the two workmen, a no claim award is given against the Union/workmen.

4. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

नई दिल्ली, 28 जून 1993

का.आ. 1556.—औद्योगिक विवाद विधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उत्तर रेलवे इलाहाबाद डिवीजन, इलाहाबाद के प्रत्यक्ष के मध्य निरीक्षण और उनके कर्मचारियों के बीच, अनुसूच में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लेबर कोर्ट, कानपुर को प्रेषित करती है, जो केन्द्रीय सरकार को 25-6-93 को प्राप्त हुआ था।

[संख्या गुन-11012/22/90-आईएल (डाय)]

के.वी.बी. उन्नी, डेस्क अधिकारी

New Delhi, the 28th June, 1993

S.O. 1556.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Uttar Railway Allahabad Division, Allahabad and their workmen, which was received by the Central Government on 25-6-93.

[No. L-41012/22/90-IR(PU)]

K.V.B. UNNY, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV PRESIDING
OFFICER CENTRAL GOVERNMENT
INDUSTRIAL-CUM-LABOUR COURT,
PANDU NAGAR, KANPUR.

I.D. No. 250 of 90

In the matter of dispute between :

Sri Dinanath Tewari, President, Uttar Railway
Karamchhari Union, 2 Navin Market Pared,
Kanpur.

And

Senior Divisional Engineer, Uttar Railway,
Allahabad Division, Allahabad.

AWARD

1. The Central Government, Ministry of Labour, vide its notification number L-41012/22/90/IR D.U. dated 24-10-90, has referred the following dispute for adjudication to this Tribunal ;

"Whether the action of the management of Northern Railway Allahabad in terminating the services of Horj Lal S/o Sri Bhalu w.e.f. 3-8-88 is justified ? If not, what relief he is entitled to ?"

2. The case of the Union is that the workman joined as a casual labour under Senior Foreman (Coaching) Kanpur on 24-5-81. He acquired Temporary status after working continuously for 120 days from 10-5-82 to 22-11-82. His name was also sent for screening and he was declared successful by Screening Committee. He had worked for 191 days in 1982, 249 days in 1983, 136 days in 1984, 286 days in 1985, 204 days in 1986, 279 days in 1987 and 180 days in 1988. From the details of working given in para 7 of the claim statement it appears that he had worked for 281 days from 3-8-87 to 2-8-88. The Union alleges that before terminating his services the management did not give 3 month's notice or three month's pay in lieu of notice to the workman nor the management obtained permission of the Government to retrench him. Against his illegal termination the workman sent the registered notice to the management on 19-9-88 and in reply the Senior Divisional Electrical Engineer (D) Allahabad by means of his letter dated 29-11-88, informed the workman that the verification of the period of his alleged working from 21-3-77 to 14-10-77 could not be done as the records pertaining to said period had been taken away by the Vigilance Cell to Delhi. According to the Union, the management could have got the verification done in this regard from the Vigilance Cell. Even otherwise the order of termination of the services of the workman is illegal as it is violative of Articles 14 & 16 of the Constitution. The Union, has, therefore, prayed for the reinstatement of the workman with full back wages and all consequential benefits.

3. No written statement has been filed by the management despite the fact that several opportunities for filing the same were given to the management. The claim statement was filed in the case by the Union on 28-12-90. Till 16-8-91 no written statement was filed by the management. The result was that the case was ordered to proceed ex parte against the management. On 8-1-92, the management applied for setting aside the order dated 16-8-91. The application was rejected on 5-2-92 as the management did not file affidavit in support of the grounds set up in their application despite order of the Court. On 5-2-91, 20-4-92 was fixed for the cross examination of the witness presumably because the submissions made by Sri H. Quereshi the authorised representative for the management that he should be given an opportunity to cross examine the Union witness. Sri Quereshi appeared on the next three dates which are 20-4-92, 26-3-92 and 20-7-92. On 2-9-92, when the case was taken up for the cross examination of the management, Sri D. N. Tewari, filed his own affidavit with one document in support of the case of the Union. He was cross examined by Sri H. Quereshi on 14-1-93, the date fixed for his cross examination. Thus we have no evidence from the side of the management what little could have been achieved through the cross examination of the workman, the opportunity given to Sri Quereshi was lost on account of his failure to turn up on 2-9-92, the date fixed for the cross examination of the workman.

4. The Union has adduced both oral as well as documentary evidence in support of its case. The oral evidence consists of testimony of workman and Sri D. N. Tewari, the authorised representative for the Union.

5. The arguments were heard from both the sides on 21-4-93.

6. In his affidavit the workman has deposed that he had worked for 190 days from 21-3-77 to 14-10-77. He has also corroborated the rest of the

case set up by the Union on behalf of the workman by producing the photostat copy of his casual labour card. The casual labour card corroborates the period of working as given by the Union in the claim statement. It therefore stands proved that the workman had worked for 281 days during the period of one year preceding the date of termination of his services by the management. There is no evidence from the management side to show that at the time of termination of his services he was given one month's notice or paid one month's wages in lieu of notice besides retrenchment compensation as provided under section 25F of I.D. Act, 1947. Therefore, the order of termination of his services which amounts to retrenchment cannot be held as legal or justified. As already said above the workman has deposed that he had worked for 190 days from 21-5-77 to 14-10-77. With his affidavit the workman has filed the copy of registered notice dated 15-9-88 given by him through Sri Vijay Singh Yadav Advocate to the Union of India, D.R.M. Northern Railway Allahabad Divisional Engineer Electrical and the Assistant Engg. Electrical, Kanpur. He has also filed the copy of reply given by the Senior Divisional Electrical Engineer Allahabad to the workman of his aforesaid notice. It appears that in his reply 29-11-88 the Senior Divisional Electrical Engineer only considered the question of screening of the workman. In the last para it was stated by him that the casual labour was entitled for screening unless he had worked before 1-8-78. It was further stated by him that although the workman had claimed to have worked prior to 1-8-78, his period of working could not be verified for want of basic records in that office which records as per I.O.W. had been taken away by the Vigilance Department. In the end it was stated by him that the workman's case could be considered for screening as and when the records are available and the period of his working was found correct. For this the workman cannot be blamed. If the records are with the Vigilance Department, the period of his alleged working should have been got verified from the Vigilance Department.

7. There is no written order of termination of his services (workman). We are therefore unable to find for what reasons the services of the workman were terminated. From the period of his working given in the casual labour card, the services of the workman could not have been terminated without compliance of the provisions of section 25F of the Act on account of the workman having worked for more than 240 days during the period of one year prior to termination of his services.

8. The sole arguments of Sri H. Quereshi the authorised representative for the management is that since it was not possible to verify the records of workman's working prior to 1-8-78, the workman could not have been retained in service because of the ban imposed on the recruitment of the casual labour by the railway Board through its circulars. There is no evidence that the workman was not engaged as a casual labour with the prior permission of the General Manager. As said by me above, there is no written order regarding termination of the services

of the workman on record. As such it cannot be said that the services of the workman were terminated on account of his having been engaged after 1-8-78 without prior permission of the General Manager. It is really surprising that right from 1981, to July 1988, the management could not make up its mind on the point. If he had worked for such a long period why should it not be then presumed that prior to his engagement necessary approval was obtained from the General Manager. There is no evidence from the side of the management that no such approval was obtained from the General Manager.

9. Hence from all that has been said above, I hold that the action of the management of Northern Railway Allahabad in terminating his (workman's) services w.e.f. 3-8-88 is not justified. Hence the workman is held entitled to his reinstatement with full back wages and all consequential benefits.

10. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

नई दिल्ली, 28 जून, 1993

क्र. आ. 1557 -- औद्योगिक विवाद अधिनियम, 1917 (1947 का 11) की धारा 17 के अन्वय में, केन्द्रीय सरकार ----- के प्रवर्णन के संबंध विवादों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, नंबर कोर्ट, कानपुर के पत्रपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-6-93 को प्राप्त हुआ था।

[संख्या पत्र - 40012/130/89 - डी. I. बी.]
के व. व. उच्चा, डेस्क अधिकारी

New Delhi, the 28th June, 1993

S.O. 1557.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Telephone Head Quarter, Kanpur and their workmen, which was received by the Central Government on 25-6-93.

[No. L-40012/130/89-D. II.B.]
K.V.B. UNNY, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV, PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU
NAGAR, KANPUR

Industrial Dispute No. 156 of 1990
In the matter of dispute between :—

Sri Gur Prasad Tiwari
Vice President/General Secretary,
U.P. Mechanical & General Workers
Association,

10/405 Khalasi Lines,
Kanpur.

AND

General Manager,
Telephones Head Quarter,
West Cott Building,
The Mall,
Kanpur.

AWARD

1. The Central Government, Ministry of Labour, vide its notification number L-40012/130/89/D-2(B) dated 10-7-1990, has referred the following dispute for adjudication to this Tribunal :-

Kya S.D.O. Phones Behari Niwas Kanpur द्वारा श्री Binda Prasad Line Kuli ki sewaen shai na karne avam padonnati na karne ki karyawahi nyayasangat hai ? Yadi nahi to sambandhit karamkar kis anuthosh ka hakdar hai ?

2. The case of the Union in short is that the workman Sri Binda Prasad has been working as Line Coolie under supervision of S.D.O. (Phones) since May, 1973.

On 9-10-79, he was not taken on duty because of his having been taken into custody by police on the alleged charge of theft of Telephone Cables. However, the Chief Judicial Magistrate Unnao, vide his order dt. 15-7-73 acquitted him of the said charge. Upon that the workman reported for duty but the management did not allow him to resume duty. Because of it the workman raised an industrial dispute which came to be registered as I.D. No. 233/85 on reference being made by the Ministry of Labour, Government of India, New Delhi. The Tribunal vide its order dated 11-7-86 in the said case ordered his reinstatement with full back wages. The management thereupon implemented the award by taking him on duty on 6-9-86 and by making him payments of back wages for the period 9-10-79 to 5-9-86. On 2-11-87, in respect of provisional seniority list of daily paid workers who had worked/completed 7 years of service on 31-3-87 a notice was issued by the management inviting objections. In respect of the said provisional list in which the name of the workman did not find mention, the workman made a written representation on 13-11-87 and in this regard the Union on his behalf sent a registered letter to the management, but in vain. The name of the workman was not included in the list of 561 workers who were to be considered for absorption as regular mazdoors in Group (D) in the pay scale of Rs. 750-940. The Union alleged that the action of the management in not including the name of the workman in the said list is unjustified. The Union has, therefore, prayed for the regularisation of the workman w.e.f. 31-12-88 and for fixing his seniority between serial number 86-87 with all consequential benefits in the category of Group D employees, in the pay scale of Rs. 750-940.

3. The case is contested by the management. With regard to the initial appointment of the workman, his arrest and acquittal by C.J.M., Unnao, there is no specific denial by the management. All that is said by the management is that all this is the matter of record and therefore, required no comments. The

management admit that the tribunal vide its award dt. 11-7-86, ordered reinstatement of the workman with full back wages. According to the management since the workman did not actually perform the duty from 9-10-79 to 5-9-86, the period cannot be treated towards service rendered by the workman. The management admit the issue of provisional list of daily paid workers having completed 7 years of service till 31-3-87 and the filing of objection against it by the workman. According to the management the period from 9-10-79 to 5-9-86 was not converted towards the service of the workman as he actually did not performed his duty during the said period. Therefore the action of the management cannot be said as wrongful or unjustified. He is not entitled to any relief. Lastly it is pleaded by the management that Telephone Department is not an Industry as has been held by C.A.T. Allahabad, by means of its order dated September 11, 1990 passed in T.A. No. 1239 of 1987.

4. As will be evident from the ordersheet dated 16-7-92, parties have not adduced any evidence in this case. Some documents have been filed by the Union with the claim statement and most of them have been admitted by the authorised representative for the management.

5. Two important point arises for consideration in this case. (1) whether the period from 9-10-79 to 5-9-86 should be calculated towards the service of the workman; and (2) whether Telephone Department is an Industry.

6. Point No. 1 :—

7. Ex. W.2 is the copy of order dated 11-7-86 given by my learned predecessor Sri R. B. Silvastava, in I.D. No. 233/85. It was an exparte award and my learned predecessor held that the action of the management in terminating the services of Sri Binda Prasad Line Coolie w.e.f. 9-10-79 is not justified. He therefore ordered workman's reinstatement with full back wages. There is no dispute about the fact that this award was implemented by the management i.e. he was reinstated and was paid back wages. This is also evident from document Ext. W-3. The document show that the Assistant General Manager (Administration) asked the workman to report for duty and informed the ALC(C) Kanpur that wages for the period 9-10-79 to 5-9-86 had been paid in cash.

8. I may state here that 1-12-92 and 26-3-93 were fixed as dates for hearing arguments. On 1-12-92 the parties auth. representatives appeared but the case was not argued by them. It was submitted by the authorised representative for the Union that the case be kept pending as against the view adopted by the Tribunal in another case that Telephone Department is not an Industry, the Union has gone against it before the C.A.T. Allahabad. Since the management side had no objection the case was adjourned and 26-3-93 was fixed for arguments. On 26-3-93 the parties and their authorised representative were absent. The case was therefore reserved for award.

9. It is clear that by means of exparte award dt. 11-7-86 the workman was reinstated in service with full back wages and that the award was implemented in full by the management. The question is whether it amounted to non recognition of the period from

9-10-79 to 5-9-86 towards service of the workman. According to the management it cannot be counted towards the service of the workman as the tribunal did not say so many words. I do not agree with it. The order of reinstatement with full back wages virtually refers to continuity of service for otherwise there was no sense for awarding back wages. It would have been a different thing had the Tribunal only ordered the reinstatement of the without of payment of back wages. Hence, point no. 1 is decided in favour of the Union/workman and against the management.

10. Point No. 2 :

With the written statement the management have also filed the copy of order dated September 11, 1990 of CAT Allahabad in registration T.A. No. 1239 of 87, Achhaiber Lal Versus Union of India and others. It was held that the Telephone Department is not an Industry within the meaning of section 2(j) of the Act. Here I would like to refer to my award dated 6-11-92 given in I.D. No. 88/88 Sri Bhola Nath Agrawal Versus General Manager Telephone Kanpur and others connected cases. In para 8 of the award I referred to the observations made by Central Administrative Tribunal Allahabad in O.A. No. 582 of 87 Union of India and others versus Shyam Sunder Lal and others. The said O.A. had arisen out of an order dated 27-4-89 passed by this Court in L.C.A. No. 419 of 87. C.A.T., Allahabad, observed that CAT has jurisdiction to certain a claim u/s 19 of the Administrative Tribunal's Act, 1985, against an order passed by industrial Tribunal/Labour Court u/s 33C(2) of the Act. Therefore, this Tribunal cannot go against what has been held by CAT Allahabad with regard to Telecom Department.

11. Hence I hold that the Telcom Department is not an Industry. In view of my finding on point no. 2, the reference becomes incompetent.

12. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

नई दिल्ली, 28 जून, 1993

का. प्र. 1558 -- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूरदर्शन केंद्र, लखनऊ के प्रबंधन के संबंध नियाजको और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, लेबर कोर्ट, कानपुर को प्रेषित करती है, जो केन्द्रीय सरकार को 25-6-93 को प्राप्त हुआ था।

[संख्या एन-42012/53/88-डी-11-बी.]

के. वी. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 28th June, 1993

S.O. 1558.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Doordarshan Kendra, Lucknow and their workmen, which was received by the Central Government on 25-6-93.

[No. L-42012/53/88-D-II.B.]

K. V. B. UNNY, Desk Officer.

ANNEXURE

BEFORE SRI ARJAN DEV PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, PANDU
NAGAR, KANPUR

Industrial Dispute No. 87 of 1990
In the matter of dispute between :
President
Doordarshan Karamchari Congress
1 Abdul Aziz Lane
Lucknow.

AND

The Director
Doordarshan Kendra
5 Mira Bai Marg
Lucknow.

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-42012/53/88-D-II(B) dt. nil has referred the following dispute for adjudication to this Tribunal :—

“Whether the Director, Doordarshan Kendra, Lucknow was justified in terminating the services of Sri Godhan from 1983? If not, what relief the workman was entitled to?”

2. The Industrial dispute on behalf of the workman has been raised by Doordarshan Karamchari Congress Lucknow (hereinafter referred to as Union) through its president.

3. The case of the Union in short is that the workman was appointed by the management as a unskilled labour on daily wages at Doordarshan Kendra Lucknow on 1-4-80. As unskilled labour he worked as a peon Farrash Messenger Chowkidar at Doordarshan Kendra Lucknow. After completing 240 days of continuous service upto December 1980, the workman represented to the management to regularise his services. However, his services were terminated without notice and without payment of retrenchment compensation w.e.f. September, 1983. The Union alleges that after the termination of services the management appointed new hands for the same kind of job which the workman was doing. Some of them are Sri Vijay Kumar, Vishnu Dayal and Prem Narain, Om Prakash, Ram Prakash and Asha Ram. The Union has, therefore, prayed for reinstatement of the workman with full back wages and continuity of service.

4. The case is contested by the management of Doordarshan Kendra Lucknow. The management plead that casual labours are engaged for specific work and specific duration and this type of arrangement is technically known as Booking. The workman has no lien on the post on which he was engaged for specific period and for specific work. He had not completed 240 days of continuous service for otherwise the management would have considered his case of regularisation. In the case of the workman there was no termination nor there arises the question of appointment.

5. In support of its case, the Union has examined the workman. No evidence has been given by the management despite giving of opportunity.

6. The workman has corroborated the case set up by the Union on his behalf by means of his affidavit. Vide his affidavit he has shown that he had worked for 325 days from September 1982 to September, 1983. The period of 12 months prior to the alleged date of termination in the present case would begin from October 1982. So after deducting the days of working in September 1982, the number of working days come to 297. Even while cross examining the workman, the authorised representative for the workman could not take out any thing beneficial to the management. In his cross-examination, he has deposed that he had worked from April 1980 to 10-9-83. Since there is no evidence in rebuttal, I see no reason why I should not place reliance on the testimony of the workman.

7. There is no plea nor any evidence from the side of the management that before termination the services the management gave him any notice and paid him retrenchment compensation in accordance with the provisions of section 25F of the Act. In the circumstances, the action of the management in terminating the services of the workman cannot be held as justified or legal. His termination being void abinitio, he is entitled to reinstatement.

8. As regards back wages, from the evidence, I am of the view that full back wages cannot be awarded to the workman. In his cross examination, the workman has deposed that after the termination of his services he took no steps against the management. He raised the industrial dispute before ALC(C) Lucknow, through Unica in 1987. The copy of the application filed by the Union before ALC(C) has not been filed by the Union. It would have shown as to when such an application was moved before ALC(C), Lucknow. However, from the reference order it appears that failure report was given by ALC(C) Lucknow, some time in 1987. It will be therefore, just and proper to award him back wages w.e.f. 1-10-87 with consequential benefits.

9. Held that the action of the management in terminating the services of the workman from September 1987 was neither legal nor justified. Consequently the management is directed to reinstate him and to pay him the back wages w.e.f. 1-10-87. The workman will also be entitled to all consequential benefits.

10. Reference is answered accordingly.

ARJAN DEV, Presiding Officer.

नई दिल्ली, 29 जून, 1993

का. प्र. 1559.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, बैंक ऑफ इंडिया के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलूर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-6-93 को प्राप्त हुआ था।

[संख्या एल-12012/211/91 आई प्रार (बी-2)]

के. बी. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 29th June, 1993

S.O. 1559.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workmen, which was received by the Central Government on 24-6-93.

[No. L-12012/211/91-IR(B)-II]

K. V. B. UNNI, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated this 21st day of June, 1993

PRESENT :

Shri M. B. Vishwanath, B.Sc., B.L.,
Presiding Officer.

CENTRAL REFERENCE NO. 73/91

I party :

D Padmanabhudu,
c/o Chatta Lakshmaiah,
Gandhinagar,
Near Namala Mission,
Dharamavaram-515 671
Ananthapur District.

V/s.

II Party :

The Regional Manager,
Bank of India,
Regional Office,
No. 49, St. Marks Road,
Bangalore-560 001.

AWARD

In this reference made by the Hon'ble Central Government by its order No. L-12012/211/91-IRE. II dt. 28-10-91 under Sec. 10(2A)(1)(d) of I.D. Act the point for adjudication as per schedule to reference is :—

“Whether the action of the management of Bank of India in dismissing the services of Sri D. Padmanabhudu, Ex. Clerk-cum-cashier Koppal Branch of the bank is justified? If not, to what relief the workman is entitled to?”

2. The I party workman as working as a cashier and accounts clerk at Koppal Branch. Ex. M.2 is the charge sheet. As per the charge sheet the acts of mis-conduct committed by the I party workman are :

(i) on 4-7-89 the I party workman, being cashier received Rs. 1,000 remitted by Nagesh Angadi for credit to his recurring deposit A/c. No. 425. The I party returned counter-foil of the pay-in-slip with bank's receipt stamp duly initialled but did not enter the receipt in the cash receipt book and did not release the voucher. He made a credit entry

of Rs. 1,000 in the customer's pass book and in the ledger folio of the recurring deposit A/c. No. 425.

In the above said manner the I party mis-appropriated Rs. 1,000 remitted by Nagesh Angadi.

- (ii) On 4-7-89 the I party received Rs. 1,000 remitted for credit of S.B. A/c. No. 1478 of Sri Ramanna Arikere. The I party returned the counterfoil of the paying-in-slip with bank's receipt stamp and duly initialled by him. But I party did not enter the receipt in the cash receipt book. He did not release the voucher and thus misappropriated the amount.

- (iii) On 29-7-89 the I party received Rs. 200 for credit to R.D. A/c. No. 366 of Baby Rupa, Rs. 100 for credit of R.D. A/c. No. 348 of Baby Vidyavathi, Rs. 50 for credit of R.D. A/c. No. 452 of Master Appanna, the I party returned the counterfoils with bank's receipt stamp and duly initialled by him, but did not enter the amounts in the cash receipt book and did not release the vouchers. Thus he misappropriated these amounts.

- (iv) The I party made fictitious credit entries of Rs. 1,000 as of 3-4-89 and Rs. 1,000 as of 31-7-89 in the pass book of Shri Nagesh Angadi R.D. A/c. No. 425 and Rs. 1,000 as of 30-5-89 and Rs. 1,000 as on 31-7-89 in the ledger folio of the said account. He also made fictitious credit entry of Rs. 708-70 ps. on 17-8-89 in the pass book of CMD A/c. of Mallikarjuna Gouda. Further he made the following fictitious entries in the pass book of S.B. A/c. No. 290 of Ningappa Lingalabandi :—

Credit : 1. Rs. 100 dated 15-4-89.

2. Rs. 50 dated 25-4-89.
3. Rs. 100 dated 02-5-89.
4. Rs. 50 dated 13-5-89.
5. Rs. 50 dated 15-5-89.
6. Rs. 700 dated 24-5-89.
7. Rs. 50 dated 30-5-89.
8. Rs. 50 dated 14-6-89.
9. Rs. 50 dated 17-6-89.
10. Rs. 50 dated 19-6-89.
11. Rs. 30 dated 26-6-89.
12. Rs. 50 dated 8-7-89.
13. Rs. 50 dated 26-7-89.
14. Rs. 100 dated 31-7-89.
15. Rs. 50 dated 14-8-89.
16. Rs. 50 dated 18-8-89.

- (v) On 17-4-89 the I party received Rs. 1000 from Saswathappa Chitralli for credit to his R.D. A/c. 465. He returned the counterfoil duly stamped and initialled but he did not enter the receipt in the cash receipt

book and did not release the voucher. He made credit entry of Rs. 1,000 on 17-4-89 in the pass book of said Saswathappa Chitralli. Thus he misappropriated Rs. 1,000 received from Saswathappa Chitralli.

- (vi) The I party workman received Rs. 394 from Gavi Biddappa Kataralli for credit to his S.B. A/c. No. 1589 but did not remit the amount to the said S.B. A/c. I party made credit entry of Rs. 200 and Rs. 194 as of 16-7-89 in the S.B. A/c. pass book of G.S. Kataralli and thus mis-appropriated Rs. 394.

- (vii) The I party workman received Rs. 1,030 from Mrs. Roslin for credit of her S.B. A/c. No. 1050. But did not remit the amount to her account. He made credit entry in her pass book. Thus he mis-appropriated Rs. 1,030.

In the aforesaid manner the I party mis-appropriated in all Rs. 4,774 which was received from the customers. He made fictitious debit and credit entries. Hence he has committed cross mis-conduct of doing acts prejudicial of the Bank's interest under para 19.5(j) of the B.P.S.

3. A Departmental enquiry was held by the III party against the I party and ultimately the I party was dismissed from service.

4. The I party in his claim statement has denied the allegations of misconduct. He has denied that the enquiry held was in accordance with principles of natural justice. He has taken up the definite stand that the D.E. held was illegal.

5. The II party has contended in the counter statement that the allegations of mis-conduct are true and that the D.E. held is perfectly valid

6. A preliminary issue was framed by this Tribunal "whether the II party proves that it has held the D.E. against the I party in accordance with law and principles of natural justice?"

7. On the preliminary issue, on behalf of the II party M.W.1 Rajarathna, E.O. who held the D.E. and M.W.2 Parthasarathy, Industrial Relations Officer of the II party have been examined. On the P.P. the I party workman (W.W.1) got himself examined in chief. The case was being posted for cross-examination of W.W.1. At this stage the I party workman has filed the memo dt. 22-4-93 conceding that the D.E. is valid and the findings given by the E.O. are correct. In the memo he has prayed that the matter be heard regarding the adequacy or otherwise of the punishment.

8. In view of the circumstances stated above, arguments were addressed by both counsel on the adequacy or otherwise of the punishment.

9. It is argued by the Learned Counsel for the II party that the I party workman had mis-appropriated the amounts of the customers and made fictitious entries and so the punishment of dismissal is valid and proper and proportionate.

10. It is argued by the Learned counsel for the I party that the punishment imposed is very harsh and dis-proportionate to the acts of misconduct and the I party should be given an opportunity to improve.

11. The I party had mis-appropriated in all Rs. 4,774 Ex. M. 10 is the order of penalty passed by the D.A. dismissing the I party from service. In Ex. M.10 it is noted that the I party workman has repaid to the customers all the amounts which he had misappropriated. He had to pay to the customers a sum of Rs. 1,350. This amount has been deposited into the Bank's account by the I party as per pay-in-slip dt. 20-10-89 marked as Ex. M. 53 before the D.E. Thus the amount misappropriated by the I party has been paid back to customers. It should be borne in mind the amount misappropriated is that of customers and not the amount of Bank.

12. Let me repeat. The I party workman has repaid the amount he had misappropriated immediately after the complaint was given against him. The amount misappropriated was the amount of the customers. The fact that the I party workman has repaid the amounts due to the customers shows his contrition and repentance. It cannot be out of place to mention, as is clear from his application for appointment, that the I party workman belongs to Schedule Tribe.

13. It has been laid down by the Hon'ble Supreme Court in AIR 1989 S.C. 149 (Scooter India Ltd., Lucknow vs. Labour Court, Lucknow) that though disciplinary enquiry is found to be fair and lawful and its findings were not vitiated in any manner, that by itself would not be a ground for non-interference of the order of termination of service. The Supreme Court has been pleased to lay down in this authority that the erring workman should be given an opportunity to reform himself and prove to be loyal and disciplined employee.

14. For the aforesaid reasons, I am of opinion, the I party should be given an opportunity to reform himself and prove to be loyal and disciplined.

ORDER

The order of dismissal of I party workman passed by the II party is set aside. The II party is directed to reinstate the I party workman with continuity of service. The party is not entitled to back wages. The period of absence of I party from duty from the date he was placed under suspension till his reinstatement shall not count for the purpose of earning increment. The I party is not entitled to two future increments with cumulative effect. Reference accepted as stated herein and award passed accordingly.

(Dictated to Stenographer, typed by him, corrected, signed by me on this 21st day of June 1993).

M. B. VISHWANATH, Presiding Officer

नई दिल्ली, 30 जून, 1993

का. आ. 1560 - जबकि भारत सरकार के श्रम मंत्रालय की दिनांक 22 जुलाई, 1991 की अधिसूचना (संख्या ए-11016/2/90-सी. एल. एम-II) के अन्तर्गत आने वाले आदेश होने तक पटना उच्च न्यायालय के अतिरिक्त जिला एवं सत्र न्यायाधीश व संपूर्ण रजिस्ट्रार

श्री भिखारी राम को श्रम न्यायालय, सं.-2, धनबाद में पीठासीन अधिकारी के रूप में नियुक्त किया गया था,

और जबकि भारत सरकार के श्रम मंत्रालय की दिनांक 22 मई, 1965 की अधिसूचना संख्या का. आ. 1697 के अन्तर्गत गठित श्रम न्यायालय सं.-1, धनबाद के पीठासीन अधिकारी का पद रिक्त हुआ है,

अतः अब औद्योगिक विवाद अधिनियम, 1947 (1947 का 14, की धारा 8 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार श्री भिखारी राम को तत्काल प्रभाव से उनके वर्तमान कार्यभार के अतिरिक्त और 18-8-1993 तक अथवा जब तक श्रम न्यायालय, सं.-1, धनबाद में नियमित पदधारी कार्यभार ग्रहण नहीं करता, जो भी पहले हो उसका श्रम न्यायालय सं.-1, धनबाद का पीठासीन अधिकारी नियुक्त करती है।

[संख्या जैड-20025/1/92-सी. एल. एम.-II]

गोपाल सिंह, अवर सचिव

New Delhi, the 30th June, 1993

S.O. 1560.—Whereas Shri Bhikari Ram, Additional D.stt. & Sessions Judge-cum-Joint Registrar (Estt.), High Court, Patna was appointed as Presiding Officer, Labour Court, No. 2, Dhanbad till further orders by the notification of the Government of India in the Ministry of Labour (No. A-11016/2/90-CLS.II) dated 22nd July, 1991 ;

And whereas a vacancy of Presiding Officer has accrued in the Labour Court, No. 1 at Dhanbad constituted by the notification of the Government of India in the Ministry of Labour No. S.O. 1697 dated the 22nd May, 1965;

Now, therefore, in exercise of the powers conferred by Section 8 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby appoints Shri, Bhikari Ram, as the Presiding Officer of the said Labour Court, No. 1 Dhanbad in addition to his present charge with immediate effect and upto 18-8-1993 or till the regular incumbent of Labour Court, No. 1 Dhanbad joins, whichever is earlier.

[No. Z-20025/1/92-CLS.II]

GOPAL SINGH, Under Secy.

नई दिल्ली, 30 जून, 1993

का. आ. 1551 - जबकि भारत सरकार के श्रम मंत्रालय की दिनांक 22 जुलाई, 1991 की अधिसूचना (संख्या ए-11016/2/90-सी. एल. एम-II) के अन्तर्गत आने वाले आदेश होने तक पटना उच्च न्यायालय के अतिरिक्त जिला एवं सत्र न्यायाधीश व संपूर्ण रजिस्ट्रार श्री भिखारी राम को औद्योगिक अधिकरण सं.-2 धनबाद में पीठासीन अधिकारी के रूप में नियुक्त किया गया है,

और जबकि श्रम मंत्रालय की दिनांक 11 जनवरी, 1960 की अधिसूचना संख्या का. आ. 103 के अन्तर्गत गठित औद्योगिक अधिकरण सं.-1 धनबाद के पीठासीन अधिकारी का पद रिक्त हुआ है,

अतः अब औद्योगिक विवाद अधिनियम, 1917 (1947 का 14 की धारा 8 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार श्री भिखारी राम को तत्काल प्रभाव से उनके वर्तमान कार्यभार के अतिरिक्त और 18-8-1993 तक अथवा जब तक औद्योगिक अधिकरण, सं.-1, धनबाद में नियमित पदधारी कार्यभार ग्रहण नहीं करता, जो भी पहले हो, उसका औद्योगिक अधिकरण सं.-1, धनबाद का पीठासीन अधिकारी नियुक्त करती है।

[सं. जैड-22025/1/92-सी. एल. एम.-II]

गोपाल सिंह, अवर सचिव

New Delhi, the 30th June, 1993

S.O. 1561.—Whereas Shri Bhikari Ram, Additional Distt. & Sessions Judge-cum-Joint Registrar (Estt.), High Court, Patna was appointed as Presiding Officer, Industrial Tribunal No. 2, Dhanbad till further orders by the notification of the Government of India in the Ministry of Labour (No. A-11016/2/90-CLS.II) dated 22nd July, 1991 ;

And whereas a vacancy of Presiding Officer has occurred in the Industrial Tribunal No. 1 at Dhanbad set up vide notification of Ministry of Labour

No. S.O. 103 dated the 11th January, 1960;

Now, therefore, in exercise of the powers conferred by Section 8 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby appoints Shri, Bhikari Ram, as the Presiding Officer of the said Industrial Tribunal No. 1 Dhanbad in addition to his present charge with immediate effect and upto 18-8-1993 or till the regular incumbent of industrial Tribunal No. 1, Dhanbad joins, whichever is earlier.

[No. Z-20025/1/92-CLS.II]
GOPAL SINGH, Under Secy.